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AND

JOURNAL OF JURISPRUDENCE.

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INCLUSIVE.

———"Quod magis ad nos
Pertinet, et nescire malui est, agitamus.

HOMER.

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The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, MAY 3, 1851.  
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TO OUR
READERS AND SUBSCRIBERS.

THE memorable and exciting incidents connected with the opening of the Great Exhibition of the Industry of all Nations, can in few instances relieve from the performance of individual duties, and does not supersede the obligation of recalling the attention of our readers to the circumstances under which the present Volume—the forty second of a series—commences.

The *Legal Observer*, as most of our readers have been informed, was established above twenty years since, chiefly for the purpose of collecting, explaining, and giving effect to the opinions of the members of the legal profession upon all matters affecting their feelings or interests. When the publication was started, the profession was without a representative amongst the periodical press, except one quarterly Magazine. Since that period, several journals, with somewhat analogous objects to our own, have from time to time sprung up. Many of these have disappeared, whilst others are still in active existence. The latter fact affords pregnant proof, that the conception was useful and not undeserving of encouragement; and if, sharing in some of the labours of the same field, our contemporaries have, as we readily admit, brought much energy and ability to bear upon the original design, we can afford to regard their success with feelings the opposite to those of jealousy or distrust. It would be vain, in these days, to claim any merit, or expect any indulgence on the ground of antiquity. We disclaim any such idea, and only ask our readers to believe that we have endeavoured honestly and consistently, to the best of our judgment and ability, to promote the interests of the

legal profession, taken as a whole,—conscientiously convinced that, from the noble and learned occupant of the woolsack—who lately received such a remarkable and well-merited testimony of the respect of his professional brethren—to the humblest writer in the smallest office, all are alike bound to unite in increasing the value and usefulness of the profession, by maintaining its honour and character.

We must, however, continue to bear in mind, that all the other legal periodicals are under the control of members of the Bar, and although for the most part they deal fairly with the attorneys and solicitors, they always (as might be expected) “stand by their order” whenever a question arises involving the immediate interests of the Bar. It is but equal justice, therefore, that our ten thousand brethren of the junior branch should be fully and zealously represented.

Assuring our readers, that the future conduct of this publication will be governed by the same principles which have heretofore influenced those to whom its management has been entrusted, and that its columns will continue to be open for the candid and temperate discussion of every question affecting the interests of the profession,—we must urge upon our friends, both in town and country, the necessity of continuing their frequent communications upon the various topics of alteration or amendment, whether proposed on the part of the profession itself, or by the large class of persons now incessantly engaged in urging forward so many kinds of reform, alike in the constitution and the practice of the Courts. We shall thus be the better enabled, from the result of large practical experience, to support those measures, which in the end will be beneficial both to the public and the profession.

We pass now to matters involving a con-

sideration of one of the most remarkable projects that has hitherto been proposed in reference to the administration of justice—the amalgamation of the Courts of Law and Equity—to which we must devote a separate article.

AMALGAMATION OF THE COURTS OF LAW AND EQUITY.

ALL are aware that it has been resolved to modify, if not altogether to abolish, the ancient forms of procedure established in the Courts of Common Law. The mode of procedure adopted in the Courts of Equity has already undergone a limited revision, and it is suggested by persons in authority, that the constitution of those tribunals requires alteration. Beyond this, a considerable portion of the business formerly transacted by the Courts of Law has been transferred to the County Courts. It is also proposed to endow those Institutions with an extensive Equity jurisdiction, and to employ them, to the exclusion of existing Courts in distributing the assets of bankrupts and insolvents. Many of these projects, however, will be inapplicable and rendered wholly unnecessary, if the more comprehensive reform, sanctioned by the Society for Promoting the Amendment of the Law, should meet with the approval of Parliament.

It appears that, under a code which exists in the State of New York, the principles of Law and Equity are administered by the same tribunals, and the Law Amendment Society, taking the New York system as a model, have adopted an elaborate, and it must be admitted, an ably drawn report, in which a change greater than all that has yet been suggested in the administration of our laws, namely, the abolition of the distinctions so long existing between Courts of Law and Equity, is earnestly recommended as a practical measure.

The report, on which this recommendation is founded, and to which we now propose to draw attention, is too voluminous to allow of our printing it in extenso. The subject is thus divided:—1st. The causes and nature of the distinction between Law and Equity; next, the practical advantage and disadvantages which flow from that distinction; and lastly, the practicability and expediency of adopting some plan whereby that distinction can be safely abolished.

The inference drawn from a consideration of the first division of the subject is thus put by the framers of the report:—

“From this brief outline it is clear that the distinction between law and equity arose not from any recognition of its abstract propriety, but because the Courts of Law and the Legislature had alike omitted to give to the system of common law that expansion which the advance of civilization imperatively required; and it is equally clear that by the substitution of precedent for discretion, of general rules for specific remedies, the nature of equitable jurisdiction has been entirely changed from what it originally was in early times. If, then, these two jurisdictions have succeeded in working together for the promotion of substantial justice, this result must be attributed, not to calculation or design, but to a fortunate accident.”

The practical advantages and disadvantages arising from the separation of jurisdiction are thus enumerated and contrasted; whether fairly, or otherwise let the reader judge.

“The advantages are only two—first, the power to preserve intact the ancient forms of our common law; and, secondly, the superior skill attainable respectively by the judges and practitioners in Courts of Law and Equity, in consequence of the division of labour.

“The principal disadvantages of the division of law and equity are the following:—

“1. The line which separates the two jurisdictions is so uncertain, that in many cases preliminary investigation of great nicety is required before it can be ascertained whether the remedy should be sought in law or in equity.

“2. In many cases a complete remedy cannot be had without having recourse, to both Courts, and thus bringing two lawsuits instead of one.

“3. Courts of Law are compelled to decide without reference to equitable principles, and consequently to do injustice with a full knowledge of the fact, and an anticipation of the subsequent overflow of their judgment by the interference of a Court of Equity.

“4. Courts of Law and Equity in many instances administer the same law, and thus a party is liable to be twice vexed for the same matter, and to have the judgment of a Court of Law in his favour rendered valueless by the adverse decision of the Chancellor on the same point.

“5. The existence of two distinct systems of pleading and practice is of itself a great evil. “6. Courts of Equity are compelled to decree that the parties themselves should carry their orders into effect, which occasions much needless trouble and expense.”

After proceeding to consider, somewhat in detail the alleged mischiefs and inconveniences arising from the separate administration of Law and Equity in our Courts of Justice, the remedy is discussed, and it is supposed it can only be arrived at by adopting the equitable procedure, the legal procedure, or by framing a new procedure.

After adverting to the relative merits of those three plans, the decision of the Committee in favour of the latter is thus expressed:—

"It is therefore the unanimous opinion of the Committee that, excepting the administration of the estates of deceased persons which they think, in accordance with the report of a former Committee, should be transferred to the Bankruptcy Courts, and except the common law jurisdiction of the Chancellor and his jurisdiction as representative *paria patriæ*, the whole jurisdiction of law and equity ought to be invested in the same Court, that the distinction between the two should be abolished, the equitable principle in cases of conflict replacing the legal, and that this single code can and ought to be carried out under the uniform system of procedure."

The Committee wind up their report by recommending the Society to adopt the following resolutions, and, as already intimated, those resolutions were agreed to at a meeting presided over by Lord Brougham, and without a dissenting voice:—

"Resolved, with reference to the separate jurisdiction of law and equity as recognized in this country,

"1. That justice, whether it relate to matters of legal or equitable cognizance, may advantageously be administered by the same tribunal.

"2. That where the principles of law conflict with those of equity, the latter shall prevail to the exclusion of the former.

"3. That all litigation, whether it relate to matters of legal or equitable cognizance, may advantageously be subjected to the same form of procedure.

"4. That the rules of procedure be embodied in a code."

The extent and practical importance of the change thus recommended causes all the other plans of reform and improvement now under discussion to seem insignificant. Accustomed to regard the established system as well calculated in the main to promote the ends of justice, though conceding that, in common with all human institutions, it is far from perfect and would admit of much improvement, the proposal of the Law Amendment Society produces that sensation which is familiarly expressed by saying, "it deprives us of breath." No one, we apprehend, supposes that the public, or the legislature, to say nothing of the profession—are prepared for such a sweeping change. Indeed, they seem to be felt by the promoters of the scheme, who have announced that the report, of which we have put our readers in possession of the outline, is to be followed by a series of reports on the same important subject. A considera-

tion of its merits will therefore be consequently postponed until the plan is fully developed. If the confidence expressed by its proposers, as to its expediency and practicability, be well founded, we shall only add, that the pigmy improvements suggested in various branches of the law can hardly be deemed worthy of consideration, as they would necessarily be swept away and give place to the new code which is now proposed to construct.

NOTICES OF NEW BOOKS.

The New Stamp Act, 13 and 14 Vict. c. 97, with Notes and Explanatory Observations, and Tables of all the Stamp Duties, payable after the 10th October, 1850, including the New Law Fund, Equity Fund, and Judgments Registry Duties in Ireland. Together with a Digest of all the Cases, not included in the Treatise on the Stamp Laws. By HUGH TILSLEY, assistant Solicitor of Inland Revenue. Third Edition, Revised and Enlarged. This work forms a Supplement to the second edition of the Treatise on the Stamp Laws by the same Author. London: Stevens and Norton, 1851.

This new edition comprises numerous notes of great value, which were not comprised in the former editions,—particularly under the heads of Agreement; Bills of Exchange; Covenant; Foreign Stamp Laws; Lease; Receipts; and Legacy Duty—all which the Practitioner should carefully peruse.

On the 15th Section, enabling parties who differ from the Board of Inland Revenue as to the duty to be affixed, to state a case for the opinion of the Court of Exchequer, Mr. Tilsley makes the following note:—

"It has been observed, that the tribunal, established by the preceding clause, is not one which will enjoy the confidence of the profession, or to which much respect is due. Seeing that the provision was introduced, not by the Government, but by a member of the profession, at the instance of a society representing, or professing to represent, the whole body, the remark occasions a little surprise. The suggestion would seem not to be grounded in opinion; and, as relates to the want of confidence, it is scarcely intelligible. The use of the term is a solecism. Unlimited reliance may be placed in the certificate, furnished by means of the stamp, whether the Board's decision be voluntarily submitted to or corrected by the superior tribunal, and whether the judgment be accord-

ing to or against the law; the value of such certificate, therefore, is inestimable. How far the view, which is, altogether opposed to the experience of the writer, is correct, may be ascertained by a reference to the instances in which the power conferred on the board has been made available. They already, within little more than four months, number upwards of two hundred."

The member of the profession who introduced the provision was Mr. Mullings, M.P., for Cirencester, at the instance of the Incorporated Law Society. We had not previously heard that the profession entertained any doubt of the utility of this enactment, and have reason to know that it was proposed, with the sanction of the Provincial Law Societies, with whom the Incorporated Society was in constant communication on the amendments in the Stamp Laws.

Mr. Tilsley is accustomed to collect all the decisions of the Courts upon any question arising out of the Stamp Acts, and since our notice of the First Edition of his *Treatise*, he has added the following:—

"An attorney who had not taken out his certificate since 1841, and whose admission, therefore, at the time of the passing of the 6 & 7 Vict. c. 73, was, by the operation of the 37 Geo. 3, c. 90, s. 31, null and void, applied for re-admission, or for an order authorizing the registrar to renew his certificate. It was suggested by the counsel whether re-admission was not absolutely requisite; but the Master informing the Court that the practice, in such cases, was merely to renew the certificate, Mr. Justice Patteson, fearing that an order for re-admission might be considered as affecting the positions of those who had, under the same circumstances, merely taken out certificates, granted a rule in the usual form."

"An attorney, who is without his certificate, is disabled from suing for fees, only in respect of business done in some suit or proceeding in one of the Courts mentioned in the 6 & 7 Vict. c. 73. In an action by an attorney for his bill of costs, the defendant pleaded, that, as to a certain portion, it was composed of fees, &c., alleged to be due for business done by the plaintiff, as an attorney, whilst he was without a certificate; to which the plaintiff demurred, specially, assigning for cause that it was not alleged that the business was done in or relating to any proceeding in any Court whatsoever. The demurrer was allowed."

Under the head of "Duplicate or Counterpart," Mr. Tilsley states the regulations made by the Commissioners for affixing the

denoting stamp on counterparts of deeds, and it appears that a mistake prevails in the profession, that the Commissioners require the original deed to be produced stamped and executed at the time of affixing the denoting stamp. Mr. Tilsley says,—

"This provision, as to the denoting stamp, the propriety of which, more particularly in the instance of duplicates, is obvious, of necessity occasions some practical inconvenience; involving, as it does, the production of the two instruments at the Stamp Office after execution; which it may, perhaps, be, in some cases, considered worth while to avoid, by stamping each as an original. It has been suggested, however, that this will not obviate the difficulty; the provision alluded to, being in its terms, peremptory; rendering it compulsory, in every case where the duty on the original is 5s. or upwards (not including any progressive duty), to have the denoting stamp on the duplicate or counterpart. That this was not the intention of the enactment is certain; nor, it is apprehended, can it be the legal effect of it. The object was, to prevent fraud by the use of an instrument impressed with a stamp of low value in the place of one requiring, probably, a large amount of duty, which might never have had any existence; representing the former to be a duplicate or counterpart; and, thus, evade the duty chargeable in respect of the transaction effected. But no such evasion can take place where the instrument, whether original or otherwise, is stamped with the full duty, as an original. At all events, the difficulty can only arise in the case of a counterpart. Where both are executed and stamped, as originals, it cannot be objected that one is a duplicate. The denoting stamp will not, however, be withheld, in any such case, if it be required."

"The inconvenience has been complained of as being increased by the regulation requiring the production of both the original and counterpart at the same time; a thing, in some instances, almost impracticable; as, frequently, lessees can scarcely, it is said, be prevailed upon to part with their leases, after having executed the counterparts; that this difficulty is, more particularly, experienced when money, to pay the fine, has been borrowed on the security of the lease, which, after execution, is immediately handed over to the mortgagees. The Commissioners do not, however, require this to be done. The lease, or other original instrument, when executed by the lessor, or grantor, may be exhibited alone; a memorandum of the date, parties, stamp, &c., being left at the office with the person to whom it is shown; and the counterpart, or duplicate, may, at a future period, be produced for the purpose of having the denoting stamp impressed."

This information will be very satisfactory, and seems to go far in removing the inconvenience complained of.

¹ *Ex parte Howard*, 20 L. J., Q. B. 65.

² *Richards v. Lord Suffield*, 2 Exch. Rep. 646; *Green v. Rice*, 2 Exch. Rep. 66.

REGISTRATION OF ASSURANCES.

ADDRESS OF THE SOLICITORS OF YORKSHIRE, W. R.

THE following is the Address from the Solicitors practising in the West Riding of Yorkshire to Owners and Mortgagees and all other Persons interested in real Property in the Riding, agreed to at a General Meeting held at Wakefield, on Friday, 25th April, 1851:—

An attempt to establish a general register for England and Wales by the deposit of original deeds in a Metropolitan Register office, (which, after a discussion in and out of parliament, extending over several years, was rejected in the House of Commons on 7th May, 1834, by a majority of 161 to 45,) has been renewed under circumstances which require that public attention should be again directed to it; and we therefore deem it incumbent upon us to submit our opinion of the measure to your consideration.

Fully concurring, as we do, in the objections made by the solicitors of the West Riding to the registration bills of 1833 and 1834 (with which the measure now proposed is identical in principle, and nearly so in many of its details), our observations must, to a considerable extent, be a repetition of those objections. We do not think that the changes made in the measure have improved it as a whole. Some of those changes, indeed, appear to us to introduce new elements of expense and danger.

By the 6th clause in the bill, districts are to be formed throughout all England; for each of which districts a map and index are to be provided. (Clause 7.) And the new system of registration required by the bill may then commence in the district after a notice of three calendar months in the *Gazette*. (Clause 8.) The formation of districts, the provision of maps and indexes, and the appointment of the time for the commencement of the new system in each district are left solely to the discretion of the Commissioners of the Treasury.

The introduction of the new system into any district within the West Riding of Yorkshire will be attended, so far as regards that district, with the consequences which we now proceed to state.

1st. The right to register deeds in the West Riding office, which, under proper regulations, would afford all the advantages of registration with convenience, economy, and dispatch, will cease; and the registration for the district will be carried on in the London register office, the distance of which must under any regulations, be the cause of inconvenience, delay, and unnecessary expense.

Clause 74 repeals the West Riding Registration Acts as to any district in which the new

system shall have commenced, and clause 78 authorizes the Commissioners of the Treasury to make provision for the custody of the documents and indexes of the West Riding Office, and for searches and copies of them.

2nd. All original deeds executed after the introduction of the new system, or a duplicate of them, must be given up by their owners and deposited in the London register office; exposed to the risk of fire or riot, and under the charge of persons appointed by the Crown, and accountable for their conduct to the Crown only.

The mode of registration prescribed by the 9th clause is "by the deposit of the original documents, or (where there are duplicate original documents), of one of the duplicate original documents in the Register Office," and by certain entries in the indexes; and a document once deposited can never be removed from the office, except in obedience to legal process for its production (clause 50.) The office in which the deposited documents are to be kept, is to be under the control of a registrar and assistants, appointed (clause 2) and paid (clause 69) by the Crown, under securities (clause 8) to the Crown, and independent out of the Consolidated Fund, even against their own omissions, mistakes, and misfeasances (clause 93.) The clerks and subordinate officers are to be appointed and removable at pleasure by the Commissioners of the Treasury (clause 3.)

3rd. The deeds when deposited will be liable to exposure, sometimes dangerous to titles, and often needlessly injurious or painful to the owners.

Every person may inspect and take copies of any documents deposited (clause 61), subject to such regulations as the Lord Chancellor, with the advice and consent of the Master of the Rolls, may from time to time make (clause 67). Such regulations, if made, will be general; and general regulations on such a subject may be easily evaded. The owner's power of self protection, by keeping his deeds in his own hands, is the best, if not the only effectual safeguard.

The principal advantage of registration, viz., to prevent the suppression of deeds, is effectually attained under the Yorkshire system by registering a memorial which warns the public of the existence of deeds, without an unnecessary disclosure of their contents.

4th. The present practice of loans on deposits, by which a respectable man in possession of his title deeds may obtain relief from sudden difficulties confidentially, and at a few hours' notice, would be destroyed; and a new practice substituted, which would be attended with painful exposure, and sometimes ruinous delay.

The ground upon which loans on deposits are now made is, that the borrower, by pro-

ducing the original deeds, satisfied the lender, that there are no prior incumbrances; and by depositing them with the lender, secures him, to a great extent, against subsequent ones. Both these safeguards will be destroyed by the fact of either the original or a duplicate being deposited in the register office; because, by means of the deposited original or duplicate, the borrower may have already incumbered the property, or may afterwards incumber it at pleasure. It would therefore become necessary, in all cases of loan or deposit, either to enter a caveat (clause 49,) or register a memorandum of the transaction (clause 17,) in the register office, where it would remain a perpetual record of the necessities of the borrowers. In times of commercial panic, the lender could not generally rely on a caveat, as it would have no effect in case of bankruptcy or insolvency (clause 62). In such cases, he must register a memorandum specifying the names of the lender and borrower, and the sum lent (clause 17), and in many other cases very little useful protection from disclosures would be obtained by registering a caveat; for a caveat must disclose the names of the parties by whom and in whose favour it is given (clauses 49 and 50), which to those acquainted with them would be nearly equivalent to a disclosure of the nature of the transaction.

4th. In every case of loan or deposit under the new system, the lender must either rely implicitly on the good faith of the borrower, or search the London register before he makes the advance to ascertain that there is no previously registered incumbrance or caveat; which search must be done by the officers, or an agent in London, and, notwithstanding all the facilities for rapid communication, must occasion expense and delay.

5th. Titles will be seriously endangered by a system of indexing in which frequent errors will be unavoidable, and such errors fatal.

The plan of indexing proposed is to be provided on a series of district maps, ultimately including the whole kingdom with books of reference, to be called "Land Indexes" (clause 7.) The maps (the estimated cost of which is 2000,000*l.*), and the land indexes, are to be provided by the Commissioners of the Treasury (clause 7.) As property is subdivided, supplemental maps are to be prepared at the expense of the parties interested (clause 53.) The first deposited title deed to any property is to be entered in an "index of titles" for all England, as the commencement of a distinct head, and to be designated by a particular number (clause 10,) to which heads a reference entry is to be made from the land index (clause 11.) All subsequent deeds affecting the property are to be entered under that head, and to be carried from one head to another, with reference to and from each on every subsequent division or union of property (clause 10.) There are to be separate indexes for some particular classes of documents, as, mills, &c. (clauses 29, 29.)

A slight mistake in any of these complicated and multiplex entries will vitiate the registration of the instrument (clause 32), and enable a subsequent purchaser or mortgagee, though with notice of the prior instruments, to obtain a preference by registering his own deed, unless actual fraud can be proved against him (clauses 30 and 36.)

The power given by clause 66 to correct errors in entries will not materially lessen the danger; as such corrections will not affect rights acquired by registration previously to the correction, and an error will not, in general, be discovered till after the mischief has been done.

6th. The expense of the mortgages, conveyances, and searches, will be much heavier than under a good system of local registration.

For many years to come, a search in the local offices will be as necessary as at present; and in addition to that expense, after the new system has commenced in any district, the following precautions will be necessary—1st. A search in the London Register Office to ascertain that no previous incumbrance is registered there. 2nd. The entry of a caveat in the London Register Office to prevent others from obtaining priority by registration over the party protected by the caveat. 3rd. The deposit of the original deed in the London Register Office. 4th. A duplicate or copy for the party. A London agent must be employed in every case; the clauses in the bills of 1833 and 1834 allowing direct correspondence between the Register Office and the country not being introduced into the present bill.

There are other serious objections to the measure which we leave unnoticed rather than increase the length of this address. We wish, however, to add a few general observations.

We are by no means insensible to the present defects of the system of registry in the West Riding. Much has been done (sometimes at the suggestion, and always with the approval of our profession) to remedy as many of them as in the present state of the Registry Acts are capable of remedy. But those acts (the last of which, 5 Anne, c. 18, passed 143 years ago) require considerable alteration before all the improvements of which the system is capable can be made. We are, as we have always been, desirous to render whatever assistance our experience may enable us to afford in the preparation of an amended act, whenever it shall be thought proper to apply to parliament for the purpose.

Still less are we insensible to the advantages of registration itself. Those advantages are felt in the West Riding, notwithstanding the defects of the present system, and the grounds made upon its usefulness by doctrines established in Courts of Equity, which many distinguished lawyers have lamented; and they

would be materially increased, if the system were judiciously improved, and such drawbacks prevented.

Our objections apply only to the particular mode of registration proposed by the bill now before parliament—the compulsory deposit of original title deeds in a central office, under the control of officers appointed by and responsible to the Crown; the necessity of perpetual reference to that office in all future dealings with landed property; and the absolute dependence of titles upon the chance of minute accuracy in a complicated index; these elements combined in one system, and that system applied to a country where landed property is the subject of a great variety and long succession of distinct and independent interests, and is constantly in a course of change, between great aggregation and small subdivisions, form sources of danger, expense, and inconvenience to which we cannot be insensible. We believe that no other system of registry, either in the United Kingdom or any foreign country, combines such elements, and that in a state where some of these elements, or an approximation towards any of them exist, it is for purposes, under circumstances, and with qualifications, essentially different from those of the proposed measure.

The risk and expense of that experiment will fall with peculiar severity on the owners of small properties, which under the present system are transferred as mortgaged on easy moderate terms. The purchaser on mortgage, relying on the security he derives from the exclusive possession of the title deeds, frequently dispenses with searches or other expensive precautions. But when that security is destroyed (as it will be by the deposit of the original, or a duplicate, in a London Register Office), the heavy expenses, which are now seldom incurred, except in large purchases, with these additions which the new system will require, will become necessary in the smallest.

We have no class intended to serve in opposing the measure. If we would separate our interest as a class from the general welfare of the community (a separation, however, which we entirely disclaim) those interests would lead us to support it.

Its effect, at least for a longer time than most of us can hope to remain in practice (and, as we believe, permanently) must be to increase, not diminish, the profits of our profession. Our motive for this address is a sense of duty. As a body of professional men, confidentially intrusted with the charge of our client's interest and safety, we have felt ourselves called upon to point out the dangers we apprehend. That duty is performed by the present statement of our opinions, and we now respectfully leave the consideration of the measures to the landowners of the West Riding, with whom it rests to decide between support, opposition, and amendment.

LAW OF ATTORNEYS.

STAMP ON COUNTERPART ARTICLES OF CLERKSHIP.

ALTHOUGH the Stamp Duties on the articles of clerkship and the admission of attorneys and solicitors remain unaltered under the new act, there is a slight relief in the counterpart or duplicate of the articles, which the profession shares in common with the rest of the public.

By the Schedule to the Act, 13 & 14 Vict. c. 97, under the head "Duplicate of Counterpart, where the Stamp Duty shall amount to the sum of five shillings or upwards," the duty is 5s.

We are not aware whether the framers of the act intended this small relief, but the terms of the Schedule clearly include articles of clerkship, for the words are "any deed or instrument of any description, whatever, chargeable with any stamp duty or duties under any act or acts in force."

To remove all doubt, however, we have ascertained by personal inspection of articles and counterpart recently executed, that the Commissioners construe the act as we have stated, and a 5s. denoting stamp is affixed upon the counterpart, instead of 35s. as previously required.

QUESTIONS AT THE EXAMINATION.

Winter Term, 1858.

I. PRELIMINARY.

1. Where, and with whom, did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what law lectures?

II. COMMON LAW, AND PRACTICE ON THE COURTS.

5. Has an attorney any lien upon a judgment, and if so, of what nature?

6. When an attorney has carried on a cause to a certain point, can he stop proceeding unless his client furnishes him with money? or how must he proceed?

7. If an attorney, by negligence or mistake, mismanages his client's cause, so that he loses the cause, has the client any remedy, and what?

8. If a landlord let a house on an agreement, and the tenant run away leaving no sufficient property on the premises to pay the rent, how is the landlord to obtain possession, so as to put an end to the agreement?

9. In what cases can cattle be impounded?

and if impounded for an excessive sum, what are the remedies; and against the party impounding, or against the poundkeeper?

10. In what cases is replevin the proper remedy, and how is it carried on in the County Court, and in the Court above?

11. In what cases may the judge certify to give the plaintiff costs? and in what cases to deprive him of costs? and when and how must the certificate be given?

12. In an action brought by a pauper, to which three pleas are pleaded, and three issues joined, the defendant recovers a verdict on two issues, being the material ones, but the plaintiff recovers on one issue, though to a certain extent an immaterial issue; who will be entitled to the costs, and are the costs of the issues found on the other side to be deducted from them?

13. Where a plaintiff brings an action in the Superior Courts that ought to have been brought in the County Court, what steps should the defendant take to deprive the plaintiff of costs?

14. How is advantage to be taken of a cause of defence after action brought?

15. Should a judge of a County Court have exceeded his jurisdiction in trying a cause he ought not to have tried, what steps must be taken?

16. If a landlord lets a house by parol for three years, and nothing is mentioned as to repairs, state what repairs each party would be liable to, and what would be dilapidations on the part of the tenant.

17. State in what cases you are compelled to sue under the Small Debts County Court Act, and how and where the suit must be brought, and where must the respective parties be residing at the time.

18. What is the meaning of a judgment *non obstante veredicto*? and what effect has it on the action, and particularly on the costs?

19. What is now the law with respect to the competency of witnesses who possess an interest in the subject-matter in issue?

III. CONVEYANCING.

20. What is a voluntary conveyance, and what are the different kinds of consideration to support a conveyance or settlement?

21. Can a voluntary conveyance or settlement be set aside under any, and what, circumstances?

22. In the case of a purchase of copyhold property, what acts are required to vest the estate in the purchaser?

23. Is there any difference in the tenures of the following estates?—A lease to A. for 99 years. A lease to A. for 99 years, if B. shall so long live. A lease to A. for three lives. A lease to A. for 99 years, if he shall so long live.

24. Supposing A. to be engaged in a precarious trade and about to marry, what clauses would you introduce into the settlement in order to protect the wife and children?

25. Since the abolition of fines, what is

necessary for a married woman to pass her interest in real estate?

26. In case a father has the power of appointing a sum of money among his children, and in consideration of a sum paid to him by one of such children, he makes an appointment in favour of such child; is that appointment good? and give a reason for your answer.

27. If a female who is under age, and entitled to both real and personal estate, marries, what effect have the articles executed previous to her marriage on her personal, and what on her real, estate?

28. What is requisite for the due execution of a will?

29. If alterations are made in a will previous to the signing what precautions would you use with respect to them; and what is necessary if a testator makes alterations after signing?

30. How may a will be revoked?

31. Who is, in common cases, the protector of a settlement, and how is an entail now destroyed?

32. In the case of a mortgage of leasehold property, what form of security would you adopt to prevent the mortgagee being liable to the covenants in the original lease?

33. What is necessary for the due execution of a warrant of attorney?

34. If a person, seized in fee, makes a lease reserving rent payable half-yearly, dies in the middle of a half-year, who is entitled to the half-year's Rent when due?

IV. EQUITY AND PRACTICE OF THE COURTS.

35. Mention some of the cases, without remedy at law, in which a Court of Equity can grant relief.

36. By what proceedings may rights be enforced in a Court of Equity.

37. By what means may such proceedings be resisted? Enumerate the different modes of defence, and explain the nature of each.

38. What effect upon a defendant's answer is produced by the plaintiff's filing, or not filing, a replication?

39. A. contracts to sell an estate to B., for a valuable consideration, and fails in the performance of his agreement; in what does the remedy supplied by a Court of Equity differ from that which is given to B. at Law?

40. If the contract were obtained by fraud, can the performance of it be enforced? and are there any means by which the delivery up of the agreement to be cancelled may be compelled?

41. In what respect does an equitable differ from a legal mortgage? and are there any, and what, proceedings provided by a Court of Equity, for converting the equitable into a legal mortgage?

42. What is a bill of discovery? Mention some instances in which it may be proper to be filed, and state the rule which regulates the costs of the suit.

43. If an infant becomes entitled to property,

are there any and what means by which their persons and property may, during infancy, be protected?

44. If an account be settled between parties, and signed, will a Court of Equity open the account generally or partially, and, if so, upon what principle?

45. An infant enters into a contract, how does the Court deal with such an engagement?

46. A. gives a bond to B., to secure the payment of a debt—the bond is lost,—has B. any and what means to compel the payment of it?

47. If an estate be sold for a certain sum of money, and an annuity for the life of the vendor, and the vendor die before the receipt of any of the annuity, will Equity grant his representatives any relief?

48. Define a trust. State the different kinds of trusts recognized in our Courts of Equity; and in what respect the legal differs from the equitable interest, in the subject matter of a trust.

49. If a legacy be given to a married woman, and her husband sue for it in the Ecclesiastical Court, will Equity interfere to prevent the payment to him; and, if so, upon what principle is such interference founded?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. Mention the several descriptions of persons liable to become bankrupt.

51. Mention the several acts of bankruptcy; distinguishing particularly those acts which constitute acts of bankruptcy only when coupled with an intention on the part of the debtor to defeat or delay creditors, from those which constitute acts of bankruptcy independent of such intention; and distinguish those which are voluntary or active from those which are passive, or merely Omissions on the part of the debtor.

52. What must be the amount of a single creditor's debt, and what the aggregate amount of the debts due to two or more creditors, to enable him or them respectively to petition for an adjudication of bankruptcy against the alleged debtor?

53. At the meeting for adjudication of bankruptcy, what are the requisites that must be proved in order to obtain such adjudication? and how are those requisites respectively to be proved?

54. Within what period may the alleged bankrupt dispute the adjudication so as to prevent its being gazetted? and what steps must he take to dispute or show cause against it?

55. How must creditors prove their debts under a bankruptcy in order to become entitled to a dividend? and what, if anything, must be given up by the creditor to entitle him to prove and take a dividend?

56. When does the choice of creditors' assignees take place, and who can vote in such choice?

57. Who appoints, removes, or changes the solicitor to the assignees?

58. In what cases, if any, can a creditor prove his debt, and take a dividend, without giving up any security he holds for the debt?

59. What is the course to be taken by a creditor, holding or claiming any part of the bankrupt's property as security, to entitle such creditor to prove a debt and take a dividend under the bankruptcy, without giving up his security to the assignees or estate? Describe the steps to be taken by such creditors?

60. What property or rights of the bankrupt pass to his assignees?

61. What acts has the bankrupt to do, and to what has he to submit, before he can obtain his certificate?

62. State generally, and as fully as you can, what are the cases in which the commissioners can withhold the certificate, and for what period?

63. Are there any cases in which the certificate of conformity, though granted and allowed by the commissioner, is absolutely void? If there are any such cases, enumerate them as far as you are able.

64. In what cases does property acquired by the bankrupt after the petition for adjudication of bankruptcy vest in the assignees? and in what cases, or at what time, will any such property be protected, and remain the property of the bankrupt?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE MAGISTRATES.

65. Explain the nature of the proceeding to redress crimes and misdemeanours, and in what respect it differs from civil actions.

66. Define principals in the first and in the second degree, and accessories before and after the fact. In what kind of offences can there be accessories? Is there any difference between the mode of trial of principals and accessories?

67. What is the rule as to the non-liability of a married woman for felony? Does that rule extend to all cases of felony?

68. Define larceny and embezzlement?

69. Under what circumstances is the receipt of stolen goods punishable? And how should an indictment be framed where it is doubtful whether the party charged is thief or receiver?

70. Define the offence of "forgery" and uttering forged instruments. What is the character of forgery at common law, and how has it been altered by statute?

71. In an indictment for forging a banker's cheque or a post-office order, how would you describe the forged document so as to make it a statutable felony?

72. Is it necessary in an indictment for forgery to set out the forged document, or may it be described generally? and in what manner may it be described?

73. What is the ordinary evidence required to prove guilty knowledge in uttering a forged instrument?

74. What is the definition of burglary, and what of housebreaking?

75. What is the definition of a "highway,"

and what is the mode of proceeding to compel its repair?

76. What parties are at common law primarily liable to repair highways? What exceptional liabilities exist by custom or prescription? Give the reason for such exceptional liabilities.

77. Upon whom is the liability to repair public bridges primarily thrown?

78. In what cases may a person charged with felony which includes an assault be found guilty of the assault? Give an instance. If A. be indicted for assaulting and killing B., and the evidence proves an assault by A. upon B., but fails to connect B.'s death with the assault, can A. be found guilty of an assault upon the trial of an indictment for manslaughter?

79. Upon what principles are dying declarations admitted as evidence in criminal cases.

IN RE WILLIAM HENRY BARBER.

On the 29th April last, a further application was made to the Court of Queen's Bench in this matter. The following is a report of what took place.

Mr. Roebuck.—My lords, in the case of Mr. Barber, I have to apply to your lordships for liberty to move. I was only anxious to save the time of the Court, and to move in such manner as to meet their convenience.

Lord Campbell.—Our opinion is, that the notices should stand good for this Term.

Mr. Roebuck.—Yes, my lord. The papers were only put into my hands last night, and, as the Term was running on, I thought it right to come down.

Lord Campbell.—Any motion-day, that is convenient to you, we will hear you as far as we are at liberty to hear you. I should say, if you have any new matter to lay before us, by affidavit, my opinion is, that you should be heard to lay those matters before us; but upon the matters already laid before the Court I consider it *res judicata*, and that the judgment of the Court ought not to be disturbed. It was a judgment in which I did not take a part.

Coram Lord Campbell, Q. J., Patteson, Wigram, and Erle, J.

I believe that no judgment that was ever pronounced by the Court was ever more patiently considered and more anxiously considered than that was, upon the merits as they were then before the Court. I have read the judgment, and must say I entirely concur in it, but if there is any other foundation for the motion, we shall be ready to hear you.

Mr. Roebuck.—Your lordship will understand I consider myself so bound by that, and did so consider before I addressed your lordship as to the new matter.

CHANGE OF ATTORNEY'S NAME.

An application was made this Term to the Court of Queen's Bench by Mr. Peacock, Q. C., on behalf of Mr. John William Smith, of Sheffield, for a rule to enter his name upon the Roll as John William Pyesmith. This gentleman, it appeared, is one of the sons of the late Rev. Dr. John Pye Smith, formerly of Homerton, and highly distinguished for his talents and profound biblical learning.

The Court at once granted the rule.—25th April, 1851.

There are several cases to the same effect as this. See *Ex parte Daggett*, 1 L. M. & P. 1; 39 L. O. 244; *Ex parte James*, 1 L. M. & P. 4; 39 L. O. 488; *Ex parte Dearden*, 1 L. M. & P. 656; 41 L. O. 32.

NOTES OF THE WEEK.

ADMISSION OF SOLICITORS.

The Master of the Rolls has appointed Tuesday the 5th May, at the Rolls Court, Chancery Lane, at Four o'clock in the afternoon precisely, for swearing Solicitors.

Every person desirous of being sworn on that day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Monday, May 5.

NEW MEMBER OF PARLIAMENT.

James William Freshfield, Esq., for Boston, in the room of the Honourable Dudley Worsley Anderson Polham deceased.

RECENT DECISIONS IN THE SUPERIOR COURTS.

SHORT NOTES OF CASES.

Lord Chancellor.

In re Taylor, a Lunatic, v. Taylor.
April 16, 23, 1851.

PAYMENT OF COSTS OUT OF ESTATE IN COURT.—DEATH OF LUNATIC.

An order was made on motion for payment of

costs incurred on behalf of a lunatic out of a fund in Court to which he was entitled, notwithstanding his decease.

This was a petition for the payment of certain costs incurred on behalf of a lunatic lately deceased, out of a fund in Court arising

in the above cause, and to which the Lunatic was entitled.

The Lord Chancellor, after taking time to consider, said, that the case of *Sherwood v. Sanders*, 19 Ves. 280; Coop. 108, appeared to be a sufficient authority to make the order prayed by the petitioner, as, if the lunatic were alive, the fund would have been liable in equity to discharge the claim, and the fact of his being dead did not affect the liability of his estate, and ordered accordingly.

Collett v. Preston and others, April 15, 23, 1851.

AMENDMENT OF BILL. — AFFIDAVIT OF AMENDMENTS CONSIDERED NECESSARY. — GETTING IN ANSWER.

Upon appeal, an order of the late Master of the Rolls was discharged refusing the plaintiff leave to amend his bill a second time, where the affidavit alleged the proposed amendments were "considered to be material," and where it was inexpedient to take the bill which was to clear off incumbrances on a fund, pro confesso against one of the defendants, a sub-mortgagor, who had not put in an answer.

This was an appeal from an order of the late Master of the Rolls refusing leave to the plaintiff to amend his bill in this suit, which was instituted to clear off the incumbrances on a fund of 10,000*l.*, and it appeared that Mr. Heath, a sub-mortgagee, and one of the defendants, of whom there were 14, had not put in his answer at the time of a notice of motion to dismiss for want of prosecution. The plaintiff having applied for a second order for leave to amend, which the Master of the Rolls refused on the ground that no case had been made out for the indulgence of the Court, this appeal was presented.

By the 67th order of May 8th, 1843, it is ordered that "a special order for leave to amend a bill is not to be granted without affidavit to the effect—

1. That the draft of the proposed amendment has been settled, approved, and signed by counsel; and,

2. That such amendment is not intended for the purpose of delay or vexation, but because the same is considered to be material for the case of the plaintiff; and by the 68th order, that "after the plaintiff has filed or undertaken to file a replication, or after the expiration of four weeks from the time when the answer, or last answer is deemed sufficient on special order for leave to amend a bill is not to be granted without further affidavit, showing that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into such bill."

Walpole and Telford in support of the appeal; Walpole, R. Palmer, Wallis, Cross, Mortdale, Tiers, Headlam, and Fooks for the several defendants; on the ground that the plaintiff had not shown that the bill was material, nor

taken the bill pro confesso as against him, and that the affidavits did not show the amendments were material.

The Lord Chancellor said, that the case came within the 67th, and not the 68th order, and that the affidavits were sufficient in stating the proposed amendments to be "considered" material. And as therefore it appeared there was good reason why the bill should not be taken pro confesso against Heath, he being a material defendant, the order of the Court below must be dismissed, costs of all parties to be costs in the cause.

April 23.—*Doyle v. Wright*—Order for reference to Master as to marriage of ward of Court.

— 23.—*In re Hertford Charities*—Stand over.

— 23.—*Prescott v. Wood*—Order for transfer of 3rd suit into Vice-Chancellor Lord Cottenham's Court.

— 25.—*Turner v. Turner*—Appeal from Vice-Chancellor of England dismissed with costs.

— 25.—*In re Vautour*—Cur. ad. vult.

— 25.—*In re Uphill*—Motion refused for order to pay to parish officer the expenses of lunatic's maintenance out of fund paid into Court under the Trustees' Relief Act.

— 25.—*In re Finch*—Appeal from the late Master of the Rolls dismissed with costs.

— 26.—*In re Smythe*—Petition for appointment of trustees directed to be heard by Vice-Chancellor.

— 24, 25, 28.—*In re Beloved Wilks' Charity*—Appeal allowed from Vice-Chancellor Knight Bruce.

— 26, 28, 29.—*Emmett v. Dewhurst*—Cur. ad. vult.

— 29.—*Morris v. Taylor*—Part heard. I Master of the Rolls.

April 23.—*In re Gedge*—Petition dismissed with costs for taxation of bills of costs.

— 23.—*Pooley v. Budge*—Cur. ad. vult.

— 24.—*In re Whalley*—Cur. ad. vult.

— 24.—*Oldfield v. Cobbett*—Application for writ of supersedeas for discharge out of custody ordered to stand over for service of notice on creditors.

— 25.—*Attorney-General v. Pickering*—Reference to the Master as to charity.

— 26.—*In re Hall's Charity*—Cur. ad. vult.

— 25, 28, 29.—*Morgan v. Morgan*—Cur. ad. vult.

— 24.—*Overton v. Hays*—Part heard.

— The Chancellor Knight Bruce.

In re Godolphin Mining Company. April 24, 1841.

ORDER SUSPENDING CALL. — DISCHARGE. — COMPROMISE.

On the application of the official manager, an order was discharged suspending an order by the Master for a call of 2*l.* per share,

upon a composition being entered into with all the contributories, except two, one of whom was out of the jurisdiction, and the other an insolvent, for payment of 3*l.* 9*s.* 6*d.* per share, whereby a sufficient sum was in hand to discharge the debts and liabilities of the company, the Master approving of the compromise, and the costs of the parties obtaining the former order being paid out of the estate.

THIS was a motion on behalf of the official manager of this company, for the discharge of an order made on 30th November last, suspending a call of 4*l.* per share, which had been directed to be made by Sir George Rose, the Master charged with the winding up of its affairs, until further order, with liberty for two persons, therein named, to take certain proceedings, which were suggested, would avoid the necessity of making so large a call.

Hislop Clarke, in support, said, that a composition had been made with all the contributories, except one who was an insolvent, and the other out of the jurisdiction, under which 3*l.* 9*s.* 6*d.* had been paid per share. The company's debts and liabilities had been discharged, and the Master acceded to the compromise.

Follett, for the parties interested, consented, on payment out of the estate of the costs of the parties who had obtained the order of November last.

The Vice-Chancellor said, that as the Master considered the arrangement a proper one, the order would be discharged, the costs to be paid out of the estate.

April 23.—*Esparle Hollingsworth, in re Hollingsworth: Hayes and others, respondents*—On appeal from Commissioner, certificate suspended for three calendar months, to be of 2nd class, and to protect merely from arrest.

—24.—*Marquis of Exeter v. London and North Western Railway Company*—Motion for injunction to restrain defendants from proceeding with certain works, stand over with liberty to bring action.

—26.—*Bensusan v. Nehemias*—Judgment on construction of will.

—25.—*Mortimer v. Hartley*—Certificate of Court of Exchequer confirmed.

—26.—*In re Worcester Corn Exchange Company*—Order for winding up.

—26.—*In re Hough's Estate*—Reference for appointment of new trustees.

—28.—*Dawson v. Oldham*—Stand over.

—28.—*Woodford v. Woodford*—Stand over.

—28.—*Rose v. Smith*—Stand over.

Vice-Chancellor Lord Cranworth.

In re Independent Assurance Company. April 25, 1851.

WINDING-UP ACT.—CONTRIBUTORY EXECUTING DEED OF SETTLEMENT.

The committee of management of a railway company awarded W. H., their managing

director, 300 shares, in consideration of his services, but being a covenantor in the company's deed of settlement, he could not execute it. His brother, R. H., however, on his representation, executed in respect of 150 shares. The directors afterwards rescinded their former resolution allotting the shares, and W. H. returned the 150 scrip certificates: Held, on appeal from and reversing the decision of the Master, that R. H. was liable as a contributory.

THE managing committee of this company had allotted 300 shares to William Holt, the managing director, but he being a covenantor did not execute the deed of settlement, and his brother, Robert Holt, agreed on his representation, to execute it in respect of 150 of such shares. The directors, on December 28, passed a resolution rescinding the allotment of shares to William Holt, on the ground that they considered his salary as managing director ought not to be paid in shares, and in the following June the scrip certificates were returned. The company had been completely registered. The Master having excluded the name of Robert Holt from the list of contributories on the ground that he was only a trustee for his brother for the 150 shares, this appeal was presented against such decision on behalf of the official manager.

Bethell and Roxburgh, for the official manager, in support; *Cairns* for Robert Holt, contra.

The Vice-Chancellor said, that the respondent, by executing the deed, had entered into an agreement with persons apart from the directors, and he was subject to all the liabilities arising therefrom, and the appeal must be allowed, and the respondent's name inserted in the list as a contributory for 150 shares,—the costs of the official manager to come out of the estate.

April 23, 24.—*Attorney-General v. Hardy*—Cur. ad. vult.

—25.—*Mayor, &c. of Preston v. East Lancashire Railway Company*—Injunction granted to restrain defendants from interfering with lands.

—25, 26.—*Cartwright v. Bridgwood*—Cur. ad. vult.

—28.—*In re Barnet and North Metropolitan Junction Railway Company, ex parte Nicoley*—Motion refused, with costs, for removal of name from list of contributories.

—28.—*Manchester, Sheffield, and Leeds Railway Company v. Ibbotson*—Injunction granted ex parte to restrain defendant from handing over certain papers.

—29.—*Cook v. Chomondelley*—Reference to Master on further directions.

—29.—*Possford v. Mayrick*—Reference on claim for specific performance of contract.

Vice-Chancellor Turner.

South Devon Railway Company v. Stevens.
April 24, 1851.

CLAIM FOR SPECIFIC PERFORMANCE OF AGREEMENT TO MORTGAGE SHARES.—MOTION FOR DELIVERY UP OF SHARES.

The Court refused a motion for delivery up of certain shares in the plaintiffs' company to the defendant in a claim for the specific performance of an agreement to execute a mortgage of such shares to secure a sum due to the plaintiffs, the defendant offering to pay the amount settled by the result of the account to be taken under the claim, unless upon the terms of giving the plaintiffs all they sought by their suit.

THIS was a claim filed under the Orders of April, 1850, to enforce the specific performance of an agreement entered into by the defendant to mortgage to the plaintiffs 450 shares in their company, of which he was a proprietor, to secure a debt due to them.

A motion was now made on behalf of the defendant that the plaintiffs might be ordered to deliver up the shares to the defendant on payment of the amount claimed, to be settled by the account taken under the claim.

James Russell and Cairns, in support, contended that the company would be protected by payment to them of the amount claimed and the shares being only deposited by way of security.

The *Vice-Chancellor* (without calling on the *Solicitor-General* and *Charles Hill*, *contra*.) said, that the motion must be refused with costs, as the Court would not interfere to give relief partly on interlocutory motion and partly by decree, unless by consent or upon terms of giving the plaintiffs all they asked for.

April 23.—*Marker v. Marker*—Judgment on motion for injunction to restrain defendant from cutting down certain ornamental timber.
— 25, 26, 28.—*Milne v. Milne*—*Cur. ad. vult.*

— 28.—*Johns v. Mason*—*Cur. ad. vult.*
— 29.—*Squire v. Ford and others*—*Cur. ad. vult.*

— 29.—*Wright v. Moore*—Reference in administration suit with leave to state special circumstances and costs reserved.

Queen's Bench.

Bayley v. Osborne. April 23, 1851.

MINING CO-PARTNERSHIP.—COST BOOK.—LIABILITY OF SHAREHOLDERS FOR GOODS SUPPLIED FOR MINE.

Held, that a shareholder is liable for goods supplied to a mine conducted on the cost book principle, unless it can be shown that the parties dealt upon the terms that the several shareholders should not be held personally liable. So held on motion for a

rule for a new trial of an action in assumpsit to recover from a shareholder the price of timber supplied for the use of the mine.

THIS was a motion for a new trial of this action which was in assumpsit against the defendant, a shareholder in the Wheal Walter Mine, for timber supplied for the use of the mine, and at the trial of which, before L. C. B. Pollock, at the last Devonshire Assizes, the plaintiff had obtained a verdict for 231l.

It appeared that, to prove the defendant was a shareholder in the company, a certificate was put in evidence of the assignment and transfer of certain shares to the defendant, his executors, administrators, and assigns, subject to the same rules, orders, and restrictions, and on the same conditions, as the same were held immediately before the execution thereof, together with a memorandum, signed by the defendant, of his having agreed to accept and take them, subject to such rules, orders, restrictions, and conditions, but the document had not been registered; and the cost book was also produced.

Kinglake, S. L., in support, on the ground that the evidence did not show the defendant was a shareholder, and that the mine being worked on the cost book principle, no one had authority to pledge the credit of the shareholders, citing *Ricketts v. Bennett*, 4 C. B. 686.

The Court said, that as the evidence was sufficient to show the defendant was a shareholder, and the cost book did not contain any evidence limiting the liability, the defendant was *prima facie* liable for the goods which had been supplied for the use of the mine. It was therefore incumbent on the defendant to show any special circumstances within the knowledge of the plaintiff creating a limited liability, and the rule must be refused.

Drummond v. Killinghurst. April 17, 1851.

RULE FOR SECURITY FOR COSTS.—PLAINTIFF NOT DOMICILED ABROAD, AND RESIDING IN THIS COUNTRY.

A rule was refused to stay, until security given for costs, the proceedings in an action brought by a native of Philadelphia, a sailor on board the defendant's vessel, to recover certain gold dust, where the plaintiff was residing in this country, and was not shown to have any domicile abroad.

THIS was a motion for a rule nisi to stay the proceedings, until the plaintiff should give security for costs in this action, which was brought in trover to recover from the defendant, the captain, by the plaintiff, a native of Philadelphia, and hired as cook on board the defendant's vessel, a quantity of gold dust which the plaintiff alleged to have given to the defendant, who denied, however, having received it.

Greenwood, Q. C., in support, contended that although the plaintiff was at present resident in this country, he had no permanent

residence, but was only residing temporarily here, citing *Osney v. Johnson*, 5 B. and Ald. 908.

The Court said that where a plaintiff, a foreigner, was residing in this country, and was not shown to have any domicile out of England, the presumption was that he would remain here, and it was therefore incumbent on the party applying for security to show the residence was only temporary. The rule was accordingly refused.

April 23.—*Ross v. Manser*.—Rule nisi to set aside verdict, and for new trial, on the ground of verdict being against evidence, and on affidavits.

23.—*Regina v. Great Western Railway Company*.—Stand over.

23.—*De Ben. Newman v. Ruslen*.—Rule nisi on leave reserved to enter a postulat.

24.—*Sherlock v. Fullager*.—*Or. ad. bull.*

24.—*Clements v. Trankham*.—Rule refused for new trial on the ground of misdirection.

24.—*Wilton v. Midland Railway Company*.—Rule nisi to set aside verdict for plaintiff, and for new trial.

24.—*Armistead v. Wilde*.—Rule nisi to set aside verdict for defendant, and for new trial on the ground of misdirection.

24.—*Milburn v. Casabelli*.—Rule nisi refused for new trial on the ground of misdirection, but granted on the ground of verdict being against evidence.

24.—*Regina v. Southampton Dock Company*.—Rule nisi to set aside side-bar rule for costs obtained by respondents.

24.—*Regina v. Hills*.—Rule refused for new trial on the ground of misdirection.

25.—*Corbett v. Massey*.—Stand over.

25.—*Glover v. North Staffordshire Railway Company*.—Stand over.

25.—*Regina v. Ladbroke*.—*Or. ad. bull.*

26.—*Regina v. Manchester South Junction and Altrincham Junction Railway Company*.—On case from sessions, order for amendment of poor-rate.

26.—*Regina v. Russell*.—On certiorari conviction quashed for infringement of patent, under the 6 & 7 Vict. c. 65.

26.—*Regina v. Coward*.—On *quo warranto* to town councillor of borough of Cambridge, judgment for the crown.

26.—*Regina v. Dean and Chapter of Rochester*.—Part heard.

28.—*Regina v. Proprietors of the Wesleyan Times*.—Rule absolute for criminal information for libel.

28.—*Regina v. Thompson*.—Rule absolute for arrest of judgment.

28.—*Bong v. Manning*.—Rule refused for prohibition to County Court in this case.

29.—*Earl of Chester v. Haig*.—On special case, judgment for plaintiff.

29.—*Regina v. Proprietors of the Wesleyan Times*.—On special case, judgment for defendant.

Queen's Bench Practice Court.

(Coram Mr. Justice Coleridge.)

In re Hunt v. Great Northern Railway Company, April 17, 1851.

RAILWAY COMPANY.—TIME TO RECEIVE PAYMENT OF TOLLS.—TITLE IN QUESTION.—COUNTY COURT.—JURISDICTION.

On motion, a rule was refused for a prohibition to the judge of a County Court from further proceeding in a plaint to recover damages against the Great Northern Railway, for having refused to carry coals unless certain tolls were paid for carrying back certain empty carriages; to which, under their act, they were entitled; and the Judge having decided on an objection that the title to tolls was in question; that it was not—on the ground, that the question was merely as to the time of payment.

This was a motion for a rule nisi, on behalf of the defendants in this plaint, for a prohibition to the Judge of the County Court of Barnet, Hertfordshire, against further proceedings therein. It appeared that the defendants carried coals in the waggons of other persons on payment of certain tolls, and they had power under their act to make a charge of 1s. 6d. per mile for the waggons on tracks of such persons when returning empty. It appeared that the plaintiff had sent some coals from Leicestershire to Peterborough, and required the defendant to transmit them to Potter's Bar, near London, but that the company had refused to transmit them, unless all their charges, including the toll per mile for back carriage were paid. And this plaint was commenced to recover damages for the injury the plaintiff had sustained from such refusal. At the trial it was objected, that the Court had no jurisdiction, as a question of title to demand the tolls was involved, but the Judge having overruled the objection, and gave judgment for the plaintiff, with 397. 19s. 6d. damages, and 13s. 8d. costs, this motion was made.

Wadsworth, in support, cited the 9 & 10 Vict. c. 95, s. 58, which enacts, that "all pleas of personal actions, where the debt or damage claimed is not more than 20*l.*, whether on balance of account or otherwise, may be holden in the County Court, without writ; and all such actions brought in the said Court shall be heard and determined in a summary way in a Court constituted under this act, and according to the provisions of this act; provided always, that the Court shall not have cognizance of any action of detinent, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise shall be in question."

The Court said, that as the title to toll had not come in question, but merely as to the time when the company had made out their right to receive payment, the County Court judge had jurisdiction, and the rule must be refused.

On April 26, a similar motion was made.

April 24.—*Regina v. Faver*—Rule nisi for criminal information against clerk to magistrates of Hull for misconduct in office.

—24.—*Jackson v. Charing Cross Bridge Company*—Rule nisi to set aside replications and demurrers—Cause to be shown in full Court.

—25.—*Regina v. North Western Railway Company*—Rule nisi for mandamus to defendants to construct bridge over street in conformity to their act.

—25, 26.—*Regina v. Garrett and others*—Sentence on prisoners.

—28.—*In re Pattison and another*—Rule nisi on attorneys to pay over balances.

—28.—*Phillips v. Higgins*—Rule nisi for attachment for non-payment of money pursuant to award.

—29.—*In re Prior*—Rule nisi on attorneys for account.

Common Pleas.

Perceval v. London and North Western Railway Company. April 16, 1851.

NEW TRIAL.—VERDICT UNDER £20.

A rule nisi was refused for a new trial, on the ground of misdirection of an action in which a verdict was given with 10l. 10s. damages, although the judge who presided at the trial was not satisfied with the verdict.

HUMFREY, Q. C., moved for a rule nisi for a new trial on the ground of misdirection in this action, which was brought by a coral-merchant, to recover the value of certain coral beads which had been delivered by the plaintiff's clerk to a clerk of Pickford and Co., the defendants' agents, for delivery at Manchester. It appeared that in moving the box at Camden Town to a railway truck it broke, and was consequently repaired by one of Pickford's porters, and that on its arrival at Manchester two rows of the beads were missing. At the trial at the last Nisi Prius Sittings in London, L. C. J. Jervis left it to the jury to say whether or not there had been any robbery committed, and the plaintiff obtained a verdict, with 10l. 10s. damages. The learned counsel in support, on the ground the goods had not been insured under the Carriers' Act, and also that they were precious stones, of which the plaintiff should have given notice to the defendants.

The Court said, that as it was not the practice to grant new trials where the verdict was under 20l., and although the presiding judge did not agree in the verdict of the jury, the rule would be refused.

Cauldwell v. Miller. April 23, 1851.

LIEU.—TRANSFER.—SECURITY FOR A DEED.

A rule nisi was refused for a new trial, on the

by *Boyle, S. L.*, and *Wordsworth*, and refused, in the Court of Common Pleas.

ground of misdirection of an action, to recover possession of a deed of conveyance of certain property to the plaintiff, from the defendant, who had obtained it from one G., to secure an advance of 20l. to him. G. having received it from A. and A. builders, to whom it had been given by one J., the purchaser of two lots of the original parcel from the plaintiff, and to whom the deed had been given upon an understanding to produce it to the plaintiff when required, holding that the whole borrowing was one transaction, and that G. had a right to transfer his lien.

THIS was a motion for a new trial on the ground of misdirection. The action was to recover possession of the deed of conveyance to the plaintiff, of a plot of ground at Kinsay, near Oxford, from the defendant, who pleaded "not guilty, not possessed, and a lie." It appeared that the plaintiff, having sold two parcels of the land to one James, delivered the deed to him on his giving an acknowledgement of the receipt, and an undertaking to produce it to the plaintiff when required, but that James, who had employed Messrs. Arnold and Allan to build cottages on the land, being unable to pay them, had given them the deed as a security, and they borrowed money thereon from one Golding, who subsequently delivered it to the defendant to secure an advance of 20l. James had left the country, and the defendant had refused to deliver up the deed except to Golding. Although the money he had lent was tendered. At the trial before Mr. Justice Talfourd, at the last Assizes for Oxford, the defendant obtained a verdict.

Alexander, Q. C., and Pigott in support, on the ground that Golding had no authority to transfer his lien.

The Court said, that as it appeared upon the evidence that the whole borrowing was one transaction, and this objection had not been made at the trial, the rule must be refused.

April 23.—*Wood v. Smith*—Rule refused to set aside verdict on the ground of being against evidence.

23.—*De dem. Richards v. Lewis*—Rule nisi on leave reserved to enter a nonsuit, or to enter the verdict for the defendant.

23.—*Abley v. Dale and another*—Rule nisi to enter a nonsuit or set aside verdict, or for new trial.

23.—*Steindach and another v. Fanning and others*—Rule nisi to set aside verdict, and to enter verdict for defendants.

23, 24.—*Booth v. Clive*—Rule refused for new trial on the ground of misdirection.

24.—*Part of Mountcashel v. Robertson*—Rule refused for new trial.

24.—*McCalmont v. Banks*—Rule nisi to enter a nonsuit.

25.—*Taylin v. Foreman*—On demurrer to surrejoinder, judgment for defendant.

26.—*Electric Telegraph Company v. Brett and another*—Rule discharged to set aside verdict for plaintiffs.

— 26.—*Hunt v. Great Northern Railway Company*—Rule refused for prohibition to County Court Judge.

— 24, 28.—*Arden v. Goodacre*—Cur. ad. vult.

— 28.—*Abley v. Dale*—Stand over.

— 28.—*London Railway Company v. London and North Western Railway Company*—Cur. ad. vult.

— 28.—*Proper and wife v. Tregear*—Stat. processus.

— 29.—*Coleman and others v. Dawson*—On special case, judgment for plaintiff.

— 29.—*Doe dem. Hale and others v. Galois*—Cur. ad. vult.

Court of Exchequer.

O'Brien v. Lord Kenyon. Nov. 13, 1850, April 17, 1851.

DEED OF TRUST FOR BENEFIT OF CREDITORS.—CHARGING PAYMENTS OF INTEREST AND PREMIUMS OF INSURANCE ON REAL ESTATES.—USURY.

A deed of trust for the benefit of creditors was held, on a special case from the late Vice-Chancellor Wigram, which provided, that the debtor should pay them interest at the rate of 5 per cent. on their debts, and insure his life to secure the principal, the payment of which was to be deferred until after his death, and charged his real estates with payment of the premiums of insurance and of the interest, not to be void for usury by reason of a stipulation for a division of the bonuses amongst the creditors.

THIS was a special case directed by the late Vice-Chancellor Wigram for the opinion of this Court, whether a deed of trust executed by the late Sir John Osborne, was void for usury, whereby it was agreed that he should pay his creditors interest at the rate of 5 per cent. on their respective debts, and insure his life for the payment of the principal, the payment of which being deferred until after his decease, and he charged his real estates, of which he was tenant for life, with payment of the premiums of insurance and interest. It was also agreed that in consideration of his creditors not proceeding against his person, they should be entitled at his death to the bonuses declared due on the several policies effected by him on his life.

Peach, for the plaintiff; *Willes*, for the defendant, one of the trustees.

Cur. ad. vult.

The Court said, that as the creditors had not only forbore but absolutely given up all personal remedy against their debtor, the stipulation as to the division of the bonuses did not avoid the deed for usury, and a certificate in accordance with such judgment would therefore be made.

April 23.—*Tenniss and another v. Johnson*—Rule refused for new trial on the ground of misdirection.

— 23.—*Ridgway v. Lord Stafford*—Cur. ad. vult.

— 24.—*Graham and others v. Newnham*—Rule nisi to set aside verdict for plaintiffs and enter a nonsuit, or for new trial.

— 25.—*Roe v. Birkenhead, Lancashire and Cheshire Railway Company*—Rule nisi on leave reserved to enter nonsuit, on the ground of verdict being against evidence.

— 26.—*Turner v. Shepherdson*—Rule refused for new trial.

— 26.—*Haslop v. Baker and others*—Rule nisi on leave reserved to enter verdict for plaintiff.

— 26.—*Thoms v. Taylor*—Rule nisi to set aside verdict for the plaintiff.

— 26.—*Sedman v. Gurney*—Rule refused on leave reserved to increase damages to 400*l*.

— 24, 28.—*Attorney-General v. London Dock Company*—Rule nisi to enter verdict for defendants on 7th, 8th, 9th and 10th counts of information, or for new trial.

— 29.—*Beacroft v. George*—Rule nisi on defendant for taxation of plaintiff's costs.

— 29.—*Lothe v. Baker*—Rule refused on leave reserved to set aside verdict for plaintiff and enter it for defendant.

Court of Exchequer Chamber.

April 26.—*Regina v. Hill*—Stand over.

— 26.—*Regina v. Davis*—Conviction quashed.

— 26.—*Regina v. Poyser*—Conviction affirmed.

— 26.—*Regina v. Hallett*—Conviction quashed.

— 29.—*Regina v. Mayor, &c., of Lichfield*—Judgment of the Court of Queen's Bench affirmed.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

House of Lords.

APPEAL, OBJECTION TO.

Taken at bar of House.—*Costs.*—An objection to the competency of an appeal ought to have been presented to the Appeal Committee, but was not noticed till the case came on for hearing at the bar of this House: the objection was in its nature fatal:

The House therefore dismissed the appeal, but, because the objection had not been taken till so late a period, dismissed it without costs. *Rochfort v. Battersey*, 2 H. of L. 389.

APPEAL, RIGHT TO.

Person improperly made party in suit.—The

circumstances that a person has been made a party to a suit in the Court below, if improperly so made, will not entitle him to appeal to this House against a decree made in that suit. *Rockfort v. Battersby*, 2 H. of L. 389.

BANKRUPT.

Action for breach of agreement for hiring.—A. entered into an agreement with B. and C. to serve them for seven years, at fixed wages, at the rate of three guineas weekly, "the party making default to pay to the other the sum of 500*l.* by way or in nature of specific damages." A. was dismissed; he became bankrupt, and after the bankruptcy brought an action of assumpsit on the agreement, to which the defendant pleaded his bankruptcy.

Held, that this plea was an answer to the action, for that the right of action in respect of this breach of the agreement passed to his assignees.¹ *Beckham v. Drake*, 2 H. of L. 579.

See *Evidence*, 1.

CHARITY COMMISSIONERS FOR IRELAND.

Powers. — Jurisdiction. — Removal of testamentary trustee.—By the act 7 & 8 Vict. c. 97, the power of the Commissioners of Charitable Donations and bequests for Ireland to sue for the recovery of such donations and bequests, is expressly limited to cases where they are withheld, concealed, or misapplied; and the same, when recovered by the Commissioners, are to be, by themselves, applied to charitable uses, according to the donor's intention. And, although they obtain the sanction of the Attorney-General to their suit, as required by the said act, they must maintain it according to the power of suing thereby given to them, and are not entitled to the general jurisdiction which the Court exercises in suits instituted by the Attorney-General.

A decree, therefore, made at the suit of the Commissioners, first, removing a testamentary trustee of a charity, on the grounds of his bankruptcy and residence abroad, but without proof of any improper withholding, or concealment, or misapplication of the trust property; and, secondly, directing the appointment of another trustee in his place, is wholly wrong. *Archbold v. Commissioners of Charitable Bequests for Ireland*, 2 H. of L. 440.

CHARITY, TESTAMENTARY TRUSTEE OF.

Bankruptcy and occasional residence abroad. — Removal from trusts.—*Semble*, that neither bankruptcy, nor occasional residence abroad, disqualifies a testamentary trustee, to whom the testator has, unconditionally, confided a large personal discretion in the administration of the trusts, together with power to appoint a receiver of the rents of the trust estate. *Archbold v. Commissioners of Charitable Bequests for Ireland*, 2 H. of L. 440.

¹ Per Wilde, L. C. J., Parke, B., Maule, Wightman, Cresswell, Erle, and Williams, JJ.; *dissentientibus*, Rolfe and Platt, BB.

DIGNITIES, CREATION OF.

Course of descent. — Presumptive evidence.

In a claim to an ancient Scotch dignity, if no patent or other instrument of creation can be produced, it may be presumed that the dignity was created by patent or charter, limiting it in the manner in which it has been actually enjoyed. And if that enjoyment be shown to have been confined to heirs male, in exclusion of nearer heirs female, the dignity must be held to be a male honour, always descendible to the heirs male of the body of the first grantee. *Crawford and Lindsay Peerages*, 2 H. of L. 534.

EVIDENCE.

1. *Bankruptcy of Testamentary trustee, not put in issue.*—Where the fact of bankruptcy of a testamentary trustee of a charity is not put in issue by the bill seeking to remove such trustee, evidence of it is not admissible at the hearing of the cause. *Archbold v. Commissioners of Charitable Bequests for Ireland*, 2 H. of L. 440.

2. *Ancient documents of public character. — Peerage. — Contemporaneous history.*—Ancient documents of a public character, brought from the proper repository, are, in the absence of patents or parliamentary records, admissible as evidence of the creation and existence of peerages. And, *semble*, that, by the law of Scotland, contemporaneous history is admissible for the same purpose. *Crawford and Lindsay Peerages*, 2 H. of L. 534.

3. *Ancient patent without seal with verified attestation.*—An ancient patent without the seal, but with the attestation thereof duly verified, is admissible evidence in a claim to a peerage. *Crawford and Lindsay Peerages*, 2 H. of L. 534.

4. *Printed copies of records.*—Printed copies of records rejected, the originals being accessible. *Crawford and Lindsay Peerages*, 2 H. of L. 547.

5. *Patent without seal or any record thereof.*—A patent, without a seal or any record of it, admitted, on proof of the attestation. *Crawford and Lindsay Peerages*, 2 H. of L. 550.

6. *Statements in writing by deceased person. — Without view to claim of peerage.*—Statements in writing by a deceased person of facts within his knowledge relating to the state of his family, without a view to a suit or claim of peerage, are admissible in proof of pedigree. *Crawford and Lindsay Peerages*, 2 H. of L. 559.

See Dignities.

FRAUD.

Allegation not proved. — Grounds for decree. — What relief to be granted.—If a bill alleges fraud, which is not proved; and also alleges other matters, which, being proved, are grounds for a decree, the proper course is to dismiss so much of the bill as is not proved, and to give so much relief, under the circumstances, as the plaintiff may be entitled to. *Archbold v. Commissioners of Charitable Bequests for Ireland*, 2 H. of L. 440.

from questions ~~whether~~ *whether* ~~the~~ *the* ~~owner~~ *owner* ~~is~~ *is* ~~entitled~~ *entitled* ~~to~~ *to* ~~recover~~ *recover* ~~the~~ *the* ~~expenses~~ *expenses* ~~of~~ *of* ~~repair~~ *repair* ~~the~~ *the* ~~ship~~ *ship* ~~is~~ *is* ~~greater~~ *greater* ~~than~~ *than* ~~the~~ *the* ~~value~~ *value* ~~of~~ *of* ~~the~~ *the* ~~ship~~ *ship* ~~will~~ *will* ~~not~~ *not* ~~be~~ *be* ~~sufficient~~ *sufficient* ~~to~~ *to* ~~show~~ *show* ~~that~~ *that* ~~he~~ *he* ~~acted~~ *acted* ~~beyond~~ *beyond* ~~the~~ *the* ~~scope~~ *scope* ~~of~~ *of* ~~his~~ *his* ~~authority~~ *authority* ~~or~~ *or* ~~to~~ *to* ~~entitle~~ *entitle* ~~the~~ *the* ~~owner~~ *owner* ~~in~~ *in* ~~an~~ *an* ~~action~~ *action* ~~on~~ *on* ~~a~~ *a* ~~policy~~ *policy* ~~on~~ *on* ~~freight~~ *freight* ~~to~~ *to* ~~recover~~ *recover* ~~as~~ *as* ~~for~~ *for* ~~a~~ *a* ~~total~~ *total* ~~loss~~ *loss*. *Benson v. Chapman*, 2 H. of L. 696.

See Ship, 10 and 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

INSOLVENCY.
Interest in assigned property.—An insolvent debtor has not such an interest in property assigned under the Insolvent Debtors' Acts, as to entitle him to enter into any litigation respecting it. *Rockfort v. Batterby*, 2 H. of L. 888.

Cases cited in the judgment: *Heath v. Chadwick*, 2 Phill. 551; *Wentworth v. Robinson*, 11 H. Sim. 103; *Kay v. Feshbrooke*, 8 Sim. 28; *Major v. Attkin*, 3 Hare, 79; *Spragg v. Bunker*, 5 N. & M. 583; *Bonfield v. Solomonson*, 6 Ves. 77; *Saxton v. Davis*, 18 Ves. 23; *Hammond v. Attwood*, 3 Madd. 108; *Barton v. Jayne*, 7 Sim. 24; *Collins v. Shirley*, 1 Russ. & M. 620.

Parties to foreclosure suit.—*W. R.* was the owner in the fee of certain estates in Ireland, which, on his marriage with *E.*, he charged with an annuity by way of jointure. *W. R.* had issue a son, *W. H. R.*, and died. For some years the annuity fell into arrear. The widow (under the terms of the settlement) entered into possession of the estates, and received the rents. *W. H. R.* became insolvent, and the assignments, usual under an insolvency, were executed. *W. H. R.* afterwards mortgaged to *B.* his interest in the estates, without giving notice to the mortgagee of his previous insolvency. He gave, as further security, a bond and warrant of attorney, it being thereby provided that *B.*, on redemption of the mortgage, should re-convey the lands and sign satisfaction on any judgment which might have been entered up on the warrant of attorney. The mortgage was duly registered, and therefore, under the Irish acts, took priority over the assignments, which had not been registered. A bill for foreclosure or redemption was filed by *B.*, the mortgagee, who made the jointress, the insolvent, and the assignees parties thereto. The Court decreed the jointure to be the first charge on the estates, and the mortgage to come next, and directed accounts to be taken accordingly. The assignees did not appeal against this decree. The insolvent presented an appeal against it.

Held, that he ought not to have been made a party to the suit, and therefore had no title to appeal against the decree. *Rockfort v. Batterby*, 2 H. of L. 388.

INSURANCE.

1. Election of Master to repair.—Expenses greater than ship's value.—Authority of Master.—Total loss.—Where, in case of damage to a ship, the Master elects to repair it, the mere

fact that the expenses of repair ultimately prove to be greater than the value of the ship, will not be sufficient to show that he acted beyond the scope of his authority, or to entitle the owner in an action on a policy on freight, to recover as for a total loss. *Benson v. Chapman*, 2 H. of L. 696.

2. Master electing to repair ship binds owner.—Special verdict.—Abandonment.—The owner of a ship insured ship and freight. On leaving Pernambuco in June, 1839, the ship struck on a rock, and put back. After a survey, repairs were begun. They were continued for a long period, and the expense of them much exceeded the value of the ship and freight. The Master, not being able to procure money in any other manner, was compelled to borrow on a bottomry bond, charging ship, freight, and cargo. On the 30th of December, 1839, the owner, in London, on being shown a letter addressed to the agents of the lenders on bottomry, in which the great expenses of the repairs were stated, gave notice of abandonment to the underwriters on ship and on freight. The ship arrived, and the freight was duly paid to the holders of the bottomry bond, under an order of the Court of Admiralty. The shipowner sued the underwriters on freight as for a total loss. The jury found, on a special verdict, that the plaintiff had acted *bona fide* without laches, and as a prudent owner of the ship and freight, if uninsured, would act.

Held, that in this case, which was one of constructive total loss, the master might have abandoned at Pernambuco, but that having there elected to repair, he must be treated for that purpose as the agent of the owner, whose acts bound the owner.

Held, also, that as the special verdict did not find that the owner, if on the spot, would not have repaired the ship, the Court could not infer that he would not have done so.

Benson v. Chapman, 2 H. of L. 696.

JOINT STOCK COMPANY.

1. Forms to be complied with by transferees of shares.—Avoidance of contract.—By the deed of co-partnership of a Joint Stock Company, certain forms were to be observed by any transferees of shares, before he could become a member of the company. *A.* purchased shares, and executed some of the acts required to constitute him a member of the company, but left one of these acts unexecuted. *Held*, that the execution of these acts was a duty cast on the purchaser for the benefit of the company, and that his non-execution of one of them, did not enable him, as respected the company, to retire from his contract. *Burns v. Pennell*, 2 H. of L. 497.

2. Fraudulent representations.—Authority of law agent.—A Joint Stock Marine Insurance Company had declared dividends, which, as it afterwards appeared, were not warranted by the real condition of the company. The law agent of the company, who was also a member of it, when applied to for information, mentioned

these dividends as proofs of the flourishing state of the company. The person to whom he so mentioned them became afterwards a purchaser of shares.

Held, that he could not relieve himself from his contract on account of these representations.

Held, also, that the law-agent of the company was not its agent to bind it in such matters; nor could he bind it as a partner, for a Joint-Stock Company is not like an ordinary partnership, bound by the Acts of any individual member of it. *Burnes v. Pennell*, 2 H. of L. 497.

3. Liability of directors publishing false statements of affairs.—If the directors of a Joint-Stock Company agree to publish false statements of the affairs of the company, under such circumstances as show a fraudulent intention to deceive, they are not only civilly liable to those whom they have deceived and injured, but may be criminally prosecuted and punished. *Burnes v. Pennell*, 2 H. of L. 497.

JOINT STOCK COMPANIES WINDING-UP ACTS.

1. Provisional committee.—Contributory.—The mere fact of a person being a member of the provisional committee of a Joint Stock Company does not make him liable as a "contributory" within the Winding-up Acts. *Norris v. Cottle*, 2 H. of L. 647.

2. Provisional committee.—Acceptance of shares.—Contributory.—If a person whose name is on the provisional committee of a Joint Stock Company provisionally registered, "accept" shares in the company, although he does not pay the deposits, he is a contributory within the Winding-up Act. *Hutton v. Uppell*, 2 H. of L. 674.

See: Provisional Committee.

PEERAGE CASE.

Admission of Attorney-General not binding on subsequent committee.—An admission by the Attorney-General in a peerage case is not binding on a subsequent committee. *Crawford and Lindsay Peerages*, 2 H. of L. 544.

See: *Reidman*, 2 H. of L. 540.

PROVISIONAL COMMITTEE-MANAGEMENT.

Not accepting or applying for shares or attending committee meeting.—C. consented to have his name inserted in the list of provisional committee men of a proposed railway company, which was provisionally registered; and the name was accordingly inserted and advertised; he did not accept or apply for shares or attend any meeting of the committee. The undertaking was afterwards abandoned.

Held, that C. incurred no liability to contribute towards payment of the debts of the company, and was not a contributory within the Winding-up Act, 1848 and 1849. *Norris v. Cottle*, 2 H. of L. 647.

2. If has consented to an acceptance of shares.—Contributory. If a person's name was on the list of provisional committee men, and he had consented to an acceptance of shares, he was a contributory.

dished prospectus of a railway company provisionally registered, and in answer to a letter from the secretary, informing him that the committee of management had apportioned 100 shares in the company to each provisional committee man, and desiring to be informed whether he would take them; he wrote a letter, saying, "I accept the 100 shares allotted me." The secretary afterwards sent him a letter of allotment "not transferable," stating that the committee of management had allotted to him 100 shares, and requesting him to pay the deposits thereon into one of the company's banks before a certain day, "for this allotment would be null and void." Upon his deposits, which did no other act in connection with the company. The undertaking, having failed for want of capital, was abandoned.

Held, that the first two letters formed a complete contract, exclusive of the third; and that W. was a contributory within the Winding-up Acts, 1848 and 1849. *Hutton v. Uppell*, 2 H. of L. 674.

See Joint Stock Company.

RECORD IN ALLEGATION. 13.

1. Commission to try prisoners for high treason.—Affirmative allegation of authority.

An allegation upon a record that three judges executed a commission in relation to the trials of prisoners, to try whom that commission was issued, is an affirmative allegation of their authority to perform that duty, and is not rendered uncertain by a subsequent statement that the commission was directed to them and others. *O'Brien v. Regiam*, 2 H. of L. 465.

See evidence, 2.

SCOTCH APPEALS.

Two actions arising out of same cause.—Judgment of Lord Ordinary and decree of Court of Sessions.—Two actions were brought in Scotland, both arising out of the same cause. They were joined. The Lord Ordinary pronounced a judgment, which, in point of form, applied to one only, but which in substance affected both. This judgment was appealed against to the Court of Session, which made a decree, disposing, in form as well as substance, of both actions. **Held**, that a decree so made was correct. *Burnes v. Pennell*, 2 A. of L. 497.

SCOTCH DIGNITY.

Before the union.—Re-grant by new patent.—An ancient Scotch dignity might, before the union, be conveyed by the possessor, together with the territory thereto annexed, to another branch of the family, or even to a stranger, with the King's authority; or it might be resigned to the King, to be re-granted by a new patent, with different destinations and with a new old precedence. *Crawford and Lindsay Peerages*, 2 H. of L. 534.

DUTY.

1. Duty of master in case of damage.—If a master of a vessel is liable for damage to the

ship, to do all that can be reasonably done to repair it, bring home the cargo, and earn the freight. *Benson v. Chapman*, 2 H. of L. 696.

2. *Declaration claiming total loss.*—*Recovery for partial loss of freight.*—A partial loss of freight may be recovered on a declaration claiming a total loss. *Benson v. Chapman*, 2 H. of L. 697.

See *Freight*. *Instructions*.

TREASON.

1. *Copy of indictment and lists of witnesses.*—*Pleading on arraignment.*—An indictment charging a prisoner in Ireland with compassing, &c., to excite insurrection there, and to levy war, and to put the Queen to death, and charging as overt acts assembling with others, armed with weapons to excite insurrection and to levy war, is not an indictment founded on the 57 Geo. 3, c. 6. Such prisoner, therefore, is not entitled, under section 4 of that act, to the benefit of the statutes 7 & 8 Wm. 3, c. 3, and 7 Anne, c. 21, and consequently is not entitled to a copy of the indictment, and to a list of witnesses, to be delivered ten days before the trial.

Query, whether the objection for the want of such copy and list is to be raised by plea on arraignment. *O'Brien v. Regiam*, 2 H. of L. 465.

2. *Extension of provisions of statutes relating to treason, to Ireland.*—The 4th section of the 57 Geo. 3, c. 6, extends only to treasons made or declared by that statute.

The 36 Geo. 3, c. 7, having been passed before the union, did not bind Ireland. The 57 Geo. 3, c. 6, § 4, made perpetual the provisions of the 36 Geo. 3, but did not extend the provisions of that statute to Ireland.

The only effect of the 11 & 12 Vict. c. 12, was to extend to Ireland certain of the provisions of the 36 Geo. 3, made perpetual by the 57 Geo. 3, but not to extend thither the provisions of the 4th section of the last-mentioned act, which was limited to treason made or declared by that act. *O'Brien v. Regiam*, 2 H. of L. 466.

3. *"Levying war against the King."*—*Poyning's act.*—The offence of levying war against the King, declared by the 25 Edward 3, stat. 5, c. 2, is high treason in Ireland, by the effect of the Irish statute 10 Hen. 7, c. 22, commonly called Poyning's Act, by which acts which were treason in England under the statute of Edward 3, were made treason in Ireland. *O'Brien v. Regiam*, 2 H. of L. 466.

4. *Allocutus on trial for high treason.*—*Surplage.*—An allocutus, whether "the justices and commissioners ought not on the premises and verdict aforesaid to proceed to judgment against the prisoner," is sufficient. The form "judgment of death," or "judgment to die," is surplusage. *O'Brien v. Regiam*, 2 H. of L. 466.

See *Record*.

TRUSTEE.

See *Charity*.

WILL.

Construction.—*Eldest son.*—*Vesting.*—A testatrix gave to the eldest son of her daughter Eliza, and of her husband W. who should be living at the time of her own decease, ten guineas, adding that she left him no larger sum, because he would have a handsome provision from the estate of her late husband and of his own father, (who was still alive); and she gave the residue of her property to her executors, upon trust, as to one moiety thereof, to pay and divide the same unto and amongst all the children of her daughter Eliza, who were then in being or should be thereafter born, except her eldest son, or such of her sons as should, by the death of an elder brother, become an eldest son, equally to be divided amongst them, and the survivors or survivor, when the youngest should arrive at the age of 21 years. At the death of the testatrix, her daughter Eliza had five children, and the eldest son was provided for from the estates in the will mentioned, and he received the ten guineas, but died, without issue, before the youngest child attained 21. The second, who then became an eldest son, did not succeed to the provision which had been made for the eldest son.

Held, notwithstanding that he, being the eldest son at the time the youngest of the children attained 21, was excluded from any share in the moiety of the residue. *Livesey v. Livesey*, 2 H. of L. 419.

WRIT OF ERROR.

Where it appeared to the House that a mistake, committed by an officer of the Court below, in entering the judgment of that Court, was made the ground of a writ of error, the arguments on the writ of error brought on such judgment were stopped, and the case was ordered to stand over, to allow the parties to apply to the Court below to amend the error.

The house made this order, after referring to the report of the opinions of the judges of the Court below, as stated in the printed reports of the decisions of that Court. *Gregory v. Duke of Brunswick*, 2 H. of L. 415.

Case cited in the judgment: *Richardson v. Melish*; 1 C. & F. 274.

WITNESS, COMPETENCY OF.

1. *Proof of copy of old document.*—A witness, brought to prove a copy of an old document, should be able to read and understand the original when he compared the copy with it. *Crawford and Lindsay Peasegood*, 2 H. of L. 524.

2. *Knowledge of hand-writing from examination of signatures.*—A person accustomed to ancient manuscripts, saying that by a careful examination of certain signatures, he had in his mind such a distinct knowledge of the hand-writing as to be able to say without immediate reference to them, whether any letter shown to him was or was not written by the same person: *Held* a competent witness. *Crawford and Lindsay Peasegood*, 2 H. of L. 557.

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LORD DENMAN ON THE LAW OF EVIDENCE AMENDMENT BILL.

LORD DENMAN, whose state of health unfits him for active interference in the business of legislation, has addressed a letter to the Editor of *The Law Review*, in which he announces his adhesion to the principle of Lord Brougham's Bill for admitting the evidence of the parties in all civil suits. Lord Denman does not profess "particularly" to argue the question, but declares that, after sifting all the doubts that had occurred to him as to the expediency of the proposed change, he had ultimately come to the clear and decided opinion that it is beneficial, or, to use his own language, "that it is necessary for the discovery of truth and the promotion of justice, and will greatly tend to prevent the crime of perjury, and ultimately to extinguish unjust litigation."

We are in no respect disposed to disparage the authority of Lord Denman upon a question of this nature, and frankly admit that the unqualified expression of his opinion is well calculated to influence the judgment of those who are prepared to decide upon individual testimony rather than upon the result of a more enlarged experience. It may be doubted, however, whether the illustrations which his lordship employs, or the observations with which he accompanies this exposition of his views, are calculated to add weight to the opinion at which he arrives. The most striking example to which his lordship is able to refer, in order to show the "monstrous consequences" arising from the rejection of the evidence of the parties to an action, is the case of a plaintiff suing on a negotiable instrument, and defeated because he is unable to prove

the hand-writing of the party proceeded against. The failure of justice caused by the defective proof of hand-writing is thus described in Lord Denman's letter.

"The plaintiff is the holder of a bill or note, which the defendant, if he signed it, is liable to pay. The plaintiff, though he and he alone saw him sign it, cannot prove the fact, because excluded by the rule of law. The defendant is protected by the same law from confessing the fact. On the trial recourse must therefore be had to those who know the hand-writing; but no witness is at hand who can speak to it with certainty. The defendant may sit in Court and be a spectator of the plaintiff's nonsuit for want of that proof; and, instead of assisting him to recover that sum which both parties know to be due, the law becomes his accomplice in converting his creditor into a debtor for the amount of the costs incurred in the prosecution of a just claim. This, which would hardly be believed if it were not conformable to constant practice, is, perhaps the extreme case; but the degrees in which injustice may be effected by this operation of law are innumerable."

Now, considering that in actions brought upon negotiable instruments, the signature of the party sought to be made liable is commonly the only circumstance the plaintiff is bound to prove, and inasmuch as the signature is held to be sufficiently proved, if any one who has seen the defendant write, or is otherwise acquainted with the character of his hand-writing, can be found to swear to his belief that the signature is the hand-writing of the defendant, we should have supposed that the instances are few and far between where a plaintiff fails to substantiate his claim by proof of the hand-writing of a defendant, unless where an indorsee gets hold of a forged bill, and the plaintiff's case fails because justice would be defeated were he successful. A tolerably regular attendance at *Nisi Prius* induces

the belief that the result which the late Chief Justice suggests as "conformable to constant practice," does not arise in one instance in a year, and never can arise without gross negligence on the part of the plaintiff's attorney, negligence which, if it frequently occurred, could not fail to be heard of and made the subject of judicial investigation.

Lord Denman's reminiscences of his practice as an arbitrator certainly is not confirmed by the experience of the profession generally. His lordship states that when at the Bar, "my experience as an arbitrator was considerable. I have no impression of having ever declined to examine a party where he was thought capable of giving useful information. I know, as the result of inquiry, that this is now frequently the case, and I may mention that, when sitting on the Bench, I have heard the witnesses of fact in making out by inference some decisive fact known to the parties. I have frequently recommended that the cause should be referred to arbitration, for the single purpose of subjecting those parties to examination. The recommendation was in two instances, that I remember, declined, and I have never heard any complaint of the consequence."

The ordinary rule, as we understand, adopted by professional arbitrators is, to exclude the evidence of any party at the instance of the adverse party. In other words, to give to a reference the scope and operation of a bill of discovery. It has never fallen to our lot to hear any arbitrator say, that his award proceeded upon the voluntary testimony of the party in whose favour it was made, and we supposed it to be an admitted fact, that evidence of this nature was deemed so unsatisfactory and unworthy of reliance that legal arbitrators seldom allowed such testimony to have any influence upon their decisions. It is extremely probable, as suggested, that the late Chief Justice never heard any "complaint" of the consequences of the arbitrations he so frequently recommended. To use an illustration familiar in Westminster Hall, an oyster might as well complain of being opened, as a suitor complain of being sent to a reference by his lordship, but in both cases there was often abundant ground for complaint.

Lord Denman disapproves of the hint thrown out in Parliament by the Lord Chancellor, that in a question of so much importance it would be well to consult the Judges of the Superior Courts, as well as the County Court Judges, and the County Court Judges, according to the noble and

earned Lord, the better qualified to form an opinion upon the subject than the Judges of the superior Courts, because the former "speak of an experiment which is actually and every day passing before their eyes, whilst the Superior Judges could only report a speculation of their own; on a state of things which has not yet presented itself to their observation." The pains which Lord Denman takes to show that parliament should legislate upon this subject on its own "untransferable responsibility," seems to argue a foregone conclusion as to the opinion of the judges. The effect of that opinion his lordship seems to anticipate, and to endeavour to weaken by the following observations, which must be considered somewhat remarkable, as coming from one who was so long and so recently himself one of the judges:—

"Besides the constant occupation of their minds in their important functions, and the necessity for the enjoyment of their hard-earned leisure, there are feelings in the Judges which must ever strengthen the reluctance to assent to alteration. They have administered the law as they found it, with implicit confidence and veneration, which unite with them with all the obvious and instinctive motives for abhorring change. It is painful to condemn the past and present. Even if they concur in the projected improvement, they had rather that others should be the persons to counsel it. What has satisfied mankind so long, may be suffered to remain during their time, and I to be what we the best."

Some of the chiefs in our Superior Courts are accustomed to the peerage in their expectations, possibly, that in parliament they will propose a remedy for the defects made apparent to them, while presiding over the administration of the law. My own activity in such legislation has not been excessive, I rather blush for the little I have attempted and the less I have been able to do. But I confess I have felt discouragement, regret, and humiliation, at receiving the answer of some of my contemporaries to points which I have thought it my duty to lay before them. The principle is perfectly right, I cannot answer your reasoning, and I see the objection to the present state of the law, and vote to the change, except that it is a change, yet I cannot bring myself to concur in it. It is a fact on record which will startle sitting judges, most of whom probably never heard of it, as I am now travelling 40 years back. The Lord Ellenborough announced in the House of Lords, the unanimous opinion of his eleven brother judges, that it would be wrong to repeal the law which punished with death a larceny to the amount of 5s. in a shop. The article had not been consulted, it solemnly volunteered that fearful effect. Perhaps also every member of that present House of Peers will be astonished to hear, that the bill now for that time rejected had ever odw jud, comenqreze

cannot forget one particular fallacy which I have frequently observed, which tends to induce the aversion of some judges to change. The system which they find they believe to have been established on full deliberation by the wisdom of former ages; and hence impute to all innovators the arrogance of reverencing a decision; whereas in truth the existing system is for the most part, the neglected growth of time and accident. Circumstances have prevailed the revision that is now taking place, and the existing defect has only been left undisturbed because no deliberation has ever been had upon it.

We have extracted this portion of Lord Denman's letter without abridgment. We have perused it with surprise, and not without pain. When a change is suggested in the Law of Evidence, and consequently in the course of procedure in trials in the Superior Courts, it might have been expected that a retired Chief Justice would have paused before indulging in remarks calculated to detract from the weight the public are disposed to attach to the opinions of those who were lately his brother judges. If report speaks truly, the sarcastic levity with which the able and learned author of "The Lives of the Chief Justices" was supposed to have treated some of the "venerable and revered" judges who have passed away, excited unmeasured indignation in the mind of Lord Denman, which he took no pains to conceal. His description of the mode in which existing judges entertain any suggestion for improvement in the law, appears to us to be as little respectful as anything to be found in Lord Campbell's pages.

We must be excused for venturing to doubt whether Lord Denman properly appreciates the vigorous, acute, and enlightened intellect of those with whom he was for many years associated. They are not quite such amiable, but unreasoning, adherents to the existing state of things, as his lordship describes. In what respect his judgment is superior to theirs upon any matter in which legal knowledge, acumen, and experience are requisite in order to form a just conclusion, we are at a loss to conceive. His lordship, it is true, has been a politician, and in the opinion of many of his own party, not always the most moderate or discreet of politicians. It may well be disputed whether this circumstance is calculated to place his opinion upon the expediency of altering the Law of Evidence above that of those judges who have not had the advantage of his lordship's political experience, but who have had these other

qualifications directed to the question now under consideration since it was first started by Bentham many years since, and as his lordship well knows, desiring to sanction the dangerous experiment which has since for the first time obtained his public approval.

We deem it necessary, thus, in our expression to our sincere convictions on this important subject. The advocates for the change may suppose we are influenced by a feeling that it would affect the interests of the profession. In other cases, we have no doubt that these dangerous innovations would largely increase the amount of litigation; but it is our duty, however unpopular it may be, to point out whatever in our opinion will be injurious to the administration of justice.

THE TREASURERS OF THE COUNTY COURTS.

It has not been our fortune to concur in the opinions of those who, depending on the County Courts, are conferring inestimable blessings upon the general community; and the extension of their jurisdiction is the one thing needful in legal legislation. We have often ventured upon the query of doubting whether the judges and other officials were the very best that could possibly be selected, and have more than once hinted that the appointment and maintenance of treasurers seemed remarkably like a job, the perpetration of which the public may one day have cause to remember and lament. Upon this part of the constitution of the County Courts, our views are confirmed by an able writer in a quarterly contemporary, which has consistently advocated the County Court system. He says—

"The appointment of treasurers was made without the least necessity, because, by an easy arrangement, the Stamp Office could have at once enabled the whole fees upon written proceedings to be collected without one farthing's expense, and these fees which are taken not upon written, but upon oral procedure, amount to so inconsiderable a sum, that the clerks could easily have gathered them in. (There are 23 treasurers, with salaries of 200*l.* and 50*l.* a year each, 200*l.* as 160*l.* to 200*l.* each, and an ample allowance for travelling expenses; inasmuch that one gentleman charges the public with 2*s.* a mile, because he travels in his own carriage, and travels 1,800 miles in a year. The total expenses occasioned by this number (if indeed the love of pithy phrase be not rather the cause of it) is above 20,000*l.* a year."

—*Law Reformer*, May, 1851, no. 1. (The only one on only one of the County Courts.)

CANDIDATES FOR THE OFFICE OF DEPUTY REGISTRARS OF DEEDS.

THREE towns contend for Homer dead. Three bodies are eagerly contesting their relative fitness to hold the office of Deputy Registrars under the Bill, introduced by Lord Campbell for the Registration of Deeds. It seems to be assumed as the basis of this controversy, that the only persons who have any title to the offices, it is supposed, are about to be created are:—1st. Unoccupied barristers and conveyancers; 2ndly. The registrars of births and marriages; and 3rdly. The County Court clerks.

The peculiar fitness of these respective classes for the posts they are anxious to assign to themselves, is discussed with a gravity and energy that would be amusing, if it were not ridiculous. Each class has its distinctive claim to the coveted appointment. The barristers, it is said, want it most, the clerks desire it most, and the registrars would do the work cheapest. It will be quite early enough to discuss the appointments under the bill, and the merits of the candidates, when we are sure that the Legislature will sanction the scheme, and have determined upon the number of deputy registrars to be appointed. Meanwhile we may be permitted to observe, that there is a class of professional men, not included in any of those above referred to, and who would be at least as well qualified as any of the three, to perform the duties of registrars in the provinces, if such offices are to be established.

REGISTRATION OF ASSURANCES.

MANCHESTER PETITION.

THE following is the substance of the petition of the members of the *Manchester Law Association* to the House of Lords:

The petitioners do not dispute that advantages to the community may be anticipated from a system of local Registration of Assurances, which, affording on the one hand a basis for the simplification and amendment of the Law of Real Property, and giving on the other the necessary information to persons legitimately requiring it on the state of titles to lands, shall be so framed as to afford the most certain and simple means of reference, and the nearest possible facility of access to the contents of the registry, with such provisions as may most effectually guard against fraud and abuse, and against the disclosure of titles to parties not entitled to inspect them.

The present bill does not fulfil these objects,

and is in particular objectionable in seeking to establish a system of central or metropolitan registration, instead of a system of local registration, providing separate Registry Offices for districts of convenient extent, into which, for this purpose, the kingdom should be divided.

The adoption of the metropolitan system would, as regards all parts of the kingdom, except the metropolis and its immediate neighbourhood, be attended with disadvantages which would more than counterbalance the benefits which, in other respects, registration may be calculated to confer.

In any but the most simple cases the requisite searches in the registry could be effectually made only by a person previously acquainted with the state of the title under consideration, and such search must therefore be made by the country solicitor, or, if a metropolitan registry be adopted, by his London agent, who must have acquired such an acquaintance by perusal of the abstract or evidence of title in possession of the client.

A great practical convenience may be expected to be derived from the facility which registration on a proper system will afford of verifying abstracts of title by comparison with the registered documents, instead of with documents held in private custody, often scattered in various and remote parts of the kingdom, and not unfrequently inaccessible from want of knowledge of their place of custody, or sufficient means for compelling their production. But it is well known to every solicitor of experience that such comparison of abstracts requires for its efficient performance familiarity with the principles and practice of conveyancing, and a knowledge of the title as shown by the abstract; and in such cases also either the country solicitor must himself make the comparison, or employ a properly qualified London agent.

The resort to London of the country solicitor, or the employment of a London agent to discharge the duties referred to, would occasion, especially in small transactions, most onerous expense to the client, which local registration would obviate; and it would be impossible for any agent to form a safe judgment on questions of identity of parcels and persons which would frequently arise on such searches and examinations, and which local knowledge alone can duly enable any one to determine upon.

To commit such searches or examinations to the registrar or his assistant would involve the necessity of his perusal of the abstract or evidence of every title requiring investigation through the medium of the registry, which would evidently be impracticable; nor could such perusal supply the unavoidable want of local and personal knowledge on the part of the registrar, nor could these objections be removed by any written instructions to be forwarded to the registrar, for it would be extremely difficult, and in many cases impossible for the solicitor to frame written instructions sufficient to enable the officers, previously unacquainted with the title, to make such searches and ex-

minations satisfactorily; and the preparation of such instructions would increase at once the responsibility of the solicitor, and the cost to the client; whilst any imperfection therein would deprive the latter of the remedy proposed by the bill to be given to him by an action for damages payable out of the Consolidated Fund, a remedy which, under the most favourable circumstances, it would be difficult to enforce.

The bill provides no means of guarding against the introduction on the registry of forged deeds and unauthorised entries, which, if once placed thereon, might occasion very great difficulty and expense to the land-owner concerned in their removal or correction; and registration may thus, instead of affording protection to titles, create a new means of embarrassing them.

This possible evil would be facilitated, and other injuries occasioned to landowners, by the liberty of transferring the registry which is proposed to be given to all persons, a liberty which the petitioners submit ought to be restricted by well considered provisions in the bill, so framed as to prevent access to the registry by parties not fairly entitled thereto, without inconveniently impeding such access by parties having just reason to require it.

Although the system of indices proposed by the present bill appears, so far as it is disclosed, to be unobjectionable, yet in this, as in other respects, the bill is, on the face of it, imperfect, inasmuch as it contemplates extensive rules and regulations for the working of the details of registration, to be framed by the Judges of the Court of Chancery, or by the registrar, whilst the petitioners submit that in a measure, the good or evil of which must depend so much on the perfection or imperfection of its details, those details should be embodied in the bill itself, that they may be judged of in connexion with other provisions; and being established, after due consideration by the legislature, may be hereafter subjected to no variation but what the same high authority may deem to be demanded by future experience.

The petitioners submit that the present bill should be altered and extended, with reference to the several matters referred to; and that when so altered and extended its future progress should be suspended until the fullest publicity shall have been given to it, and the consideration of both branches of the legal profession invited to its provisions; to the end that the bill, when ultimately passed into a law, may appear in a form suitable to the great importance of its object; and which may avoid, so far as possible, the injurious necessity of alteration and amendment by subsequent acts.

Whatever advantages in points of safety may arise from a properly constructed system of local registration, the petitioners would not be discharging their duty to their lordships House and the public if they did not express their opinion that an erroneous impression is entertained as to the tendency or effect of registration to reduce the expense of conveyancing; their feeling being that for some years after the es-

tablishment of such a perfect system of registration, the direct expenses will be increased rather than diminished; and that the expenses of carrying into effect such a system of registration, as is proposed by the present bill, would more than counterbalance all the advantages which even in the metropolis would be derived from the measure.

NORTHAMPTONSHIRE PETITION.

The petition of the members of the *Northamptonshire Law Society*, and other solicitors residing in the town and county of Northampton, contains the following statements:—

The petitioners are of opinion that the proposed measure will not secure advantages to the landed and commercial interests commensurate with the expense, delay, litigation, exposure of title, and other serious evils which it will entail; and, whilst the tendency of recent legislation has been to diminish the expense of small purchases, the proposed measure will greatly increase the expense of such transfers.

The numerous building societies at present in existence in this country prove a growing desire in the industrious classes to become freeholders. To all such persons the proposed bill will operate as a heavy tax, as the effect will be at least to double the expense of their conveyances.

Local knowledge is essentially necessary to trace the title on the registers; and to find the property on the proposed maps, particularly in cases where property is derived from the same title and with descriptions nearly identical. This knowledge cannot be possessed by registering officers, nor with any certainty communicated by correspondence; and it is feared that much expense will be incurred by useless copies being sent into the country.

Instead of the map being the guide to the identity of the property, it will be found that the property must be first ascertained and identified, and afterwards the map referred to, and in many cases corrected by a surveyor, thus necessarily increasing the ordinary expense of conveyance, whereas the identification of the property in the first instance being complete without the map, the latter is entirely useless.

Further difficulty will arise in completing purchases and mortgages, for the deed will not be complete until it is *actually registered*; and purchasers and mortgages will not be safe in parting with their money, nor will vendors or mortgagors be satisfied to execute deeds until the consideration money is paid. Yet one or the other of these objectionable courses must be resorted to. Many parties in the habit of advancing money upon mortgage have already expressed their determination not to advance any money upon a deed which will require registration to perfect it, and state that they prefer relying upon the actual custody of the title deeds in any mode of registration that can be adopted.

This difficulty is now felt in negotiating

from each other, being bound to attend the County Court where the other party dwelt, dependant upon the discretion of a single judge? 3. Because I submit that, looking at this statute even as an *ordinary* statute, it should receive the construction I have contended for. It is a well known rule that statutes should receive a liberal construction, and "it is the business of the judges so to construe an act as to suppress the mischief and advance the remedy," (3 Rep. 7, Co. Litt., 11, 42). And the learned commentator of the Laws of England, Mr. Justice Blackstone, (by Stewart, vol. 1, p. 83.) says, that "besides the liberality of sentiment with which our Common Law Judges interpret acts of parliament," &c. I imagine that if the legislature used the term "*may*" advisedly, its object was this,—viz., the giving the party an *opportunity* to obtain his costs by applying to a judge, and that then the judge *may* (i. e., *would*?) make an order. Surely, this is a much fairer construction to put on the statute than that adopted by the Court of Exchequer, and with the manifest objects of the legislature in passing the County Courts' Acts.

But the 2nd question is, assuming, for argument's sake, the construction of the Court of Exchequer to be correct, is it an equitable one? If a plaintiff, residing in London, suing a defendant, residing at Doncaster, is not to be allowed his costs, and this too even under a discretionary clause, who will be allowed such costs on a verdict for any amount under 20*l.*? Does it not establish the great risk, nay almost *certainly*, of being repulsed in an application for such costs on the grounds of *distance* between the parties; And yet, if this were intended by the legislature, why was the exception introduced by the legislature? Surely not to mislead,—and if not to mislead, also not to be a mere show but without effect. Nothing is more grievous than *uncertainty*,—positive deprivation in many cases is infinitely preferable,—and yet, after the decision of the Court of Exchequer, no one recovering less than 20*l.* can be *certain* of his costs if suing in the Superior Court on account of distance between the parties; but, on the contrary, that decision would seem to indicate that they may be rather *uncertain* of their costs. The legislative act and construction put upon it, taken together, present an example of legislation of an unfairly dubious nature, and ought not to be allowed to pass without comment.

Liverpool.

VIGILANS.

NEW RULES.

GREAT SEAL PATENT OFFICE.

It is ordered that, before any Letters Patent for Inventions shall be passed under the Great Seal, there shall be deposited with the Privy Seal Bill at the Great Seal Patent Office, a certificate by the Attorney or Solicitor-General, that an outline description in writing or drawing of the invention has been filed with them, or one of them. Dated 2nd May, 1851.

(Signed)

THURCO, C.

EXPENSE OF REGISTERING DEEDS.

In the able remarks published by the *Kent Law Society*, which we have just received, (and to which we shall again refer), a statement is given of the expenses which will be added to the present charge for conveyancing transactions. This is an important point for consideration, because it is the avowed object of the proposed registration to "diminish the burdens upon land." If the expenses will be increased instead of being diminished for 60 or even 30 years to come, there must be an end of the project.

In counting the cost, we have to consider, 1st. The plan of a Map, showing the boundaries of every estate, large and small, throughout the length and breadth of the land, with an Index to every Title. This is estimated at two millions. 2nd. There must be in every case a duplicate Deed. 3rd. A statement for the Registrar. 4th. Journeys to make searches. 5th. To enter caveats. 6th. To register the Deed. 7th. No deed, though its purpose has been answered, if once on the register, can be omitted from the abstract of Titles. 8th. The shortening of Titles by excluding early deeds, and numerous inquiries will be prevented. 9th. The fire proof buildings will cost an enormous sum.

Then, independently of expence, there will be *delays* in matters requiring the greatest expedition; and notwithstanding the greatest care, there will also be *errors* and *frauds*. There are now and may still be forged wills, and deeds which the registrar may fail to detect. These evils of expence and delay, and these risks of error and fraud, seem to be more than equal to the rare instances of lost or suppressed deeds under the present system.

NOTES OF THE WEEK.

THE INTERESTS OF THE PROFESSION IN RELATION TO LAW REFORM.

We observe that several writers in the newspapers, no doubt in zeal for the public good, and from want of sufficient information, impute to the lawyers selfish motives for opposing some of the favourite schemes of law reform. They are entirely mistaken in this charge against the profession. For instance, a general registration of assurances would largely increase the emoluments of solicitors for many years to come, if not perpetually. We believe, if the reformers were *unassisted* by the experience of *practical* men, that the alterations proposed would, on the whole, greatly increase the extent of litigation, and the pecuniary advantage of the practitioners; but *they feel* that it is *their duty* to point out the mischiefs that will arise from many of the measures in progress, and, in lieu of thanks, they must expect

to be assailed by the persons interested in carrying out the projects by which they expect to be promoted to official appointments.

AMALGAMATION OF LAW AND EQUITY.

We are assured by persons on whose authority we have reason to rely, that the union of the Courts of Law and Equity in New York works ill. The new code has increased the intricacy of practice and created greater uncertainty than the former system. The judgments of the several Courts are often diametrically opposed to each other, both on pleading and practice, and how long it will take to settle the construction of the code, it is impossible to say. The other States of America will probably pause before they follow the example of New York.

UNFITNESS OF THE COUNTY COURTS TO DECIDE SUITS IN EQUITY.

There seems to be no doubt amongst those best acquainted with the practical working of suits in Equity, that the Bill for conferring original jurisdiction on the County Courts, by way of Claim, in the larger part of the cases now belonging to the Court of Chancery will not only be highly prejudicial in itself, but will tend to destroy the utility of the County Courts in their proper business of small debts and demands. It is greatly to be feared that the duties for which they were established will be neglected, and that they will fail in the discharge of the new duties which were never contemplated when the judges and officers were selected. The two sides of Westminster Hall have been hitherto kept distinct; the division of the labour of Law and Equity has been found advantageous, and it cannot reasonably be expected that their union in the County Courts will be successful. It may be admitted that such Courts are useful to a limited

amount in ordinary and simple transactions; and it may be granted that some of the judges who have accepted the office, are competent for the discharge of much higher duties; but the general opinion is, that the great majority of them would not be chosen as Masters in Chancery, whose duties it is now injudiciously proposed should be added to those which they were chosen to perform. It is probable that the County Court Judges, and still more the District Commissioners in Bankruptcy, would be useful in local inquiries, and the examination of witnesses *vidæ voce*, conducted by the professional agents of the parties, instead of secret examinations on written interrogatories; and to this extent we hope an alteration will be effected.

LAW PROMOTIONS.

This day (May 5) the Right Honourable Andrew Rutherford was, by her Majesty's command, sworn of her Majesty's most honourable Privy Council, and took his place at the board accordingly.—From the *London Gazette* of 6th May.

NEW MEMBERS OF PARLIAMENT.

Francis Stack Murphy, Serjeant-at-Law, for the city of Cork, in the room of William Fagan, Esq., who has accepted the office of Steward of the Chiltern Hundreds.

The Right Hon. Richard More O'Ferrall, for the county of Longford, in the room of Samuel Wensley Blackall, Esq., who has accepted the office of Governor of the Island of Dominica.

SITTINGS IN LONDON.

The Adjournment Day for the Trial of Causes at Nisi Prius will be Monday, the 19th May.

RESULT OF EASTER TERM EXAMINATION.

By leave of the Judge, some of the Candidates who had not given sufficient notice, were added to the List, and 111 were examined,—of whom 100 were passed and 11 postponed.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

In re Vavasour. April 16, 25, May 2, 1851.

ROMAN CATHOLIC.—LUNATIC.—SALE OF NEXT PRESENTATION TO LIVING.—JURISDICTION.

Held, that the Court has no jurisdiction, under the 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 125th, 126th, 127th, 128th, 129th, 130th, 131st, 132nd, 133rd, 134th, 135th, 136th, 137th, 138th, 139th, 140th, 141st, 142nd, 143rd, 144th, 145th, 146th, 147th, 148th, 149th, 150th, 151st, 152nd, 153rd, 154th, 155th, 156th, 157th, 158th, 159th, 160th, 161st, 162nd, 163rd, 164th, 165th, 166th, 167th, 168th, 169th, 170th, 171st, 172nd, 173rd, 174th, 175th, 176th, 177th, 178th, 179th, 180th, 181st, 182nd, 183rd, 184th, 185th, 186th, 187th, 188th, 189th, 190th, 191st, 192nd, 193rd, 194th, 195th, 196th, 197th, 198th, 199th, 200th, 201st, 202nd, 203rd, 204th, 205th, 206th, 207th, 208th, 209th, 210th, 211th, 212th, 213th, 214th, 215th, 216th, 217th, 218th, 219th, 220th, 221st, 222nd, 223rd, 224th, 225th, 226th, 227th, 228th, 229th, 230th, 231st, 232nd, 233rd, 234th, 235th, 236th, 237th, 238th, 239th, 240th, 241st, 242nd, 243rd, 244th, 245th, 246th, 247th, 248th, 249th, 250th, 251st, 252nd, 253rd, 254th, 255th, 256th, 257th, 258th, 259th, 260th, 261st, 262nd, 263rd, 264th, 265th, 266th, 267th, 268th, 269th, 270th, 271st, 272nd, 273rd, 274th, 275th, 276th, 277th, 278th, 279th, 280th, 281st, 282nd, 283rd, 284th, 285th, 286th, 287th, 288th, 289th, 290th, 291st, 292nd, 293rd, 294th, 295th, 296th, 297th, 298th, 299th, 300th, 301st, 302nd, 303rd, 304th, 305th, 306th, 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Catholic, although the Master reported that such sale would be for his benefit. So held, on petition by his committee for a confirmation of the Master's report.

This was a petition for the confirmation of the Master's report, to whom it had been referred by the late Lord Chancellor to inquire whether it would be for the benefit of the lunatic, who was a Roman Catholic and owner of the advowson of Draycott-on-the-Moors,

that the next presentation should be sold. The Master having reported in the affirmative, this petition was presented by his committee.

Bacon and Skee, in support, referred to 11 Geo. 4, and 1 Will. 4, c. 65, ss. 24, 27, which enact, that "where any person, being a lunatic, is or shall be seized or possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the Lord Chancellor, intrusted as aforesaid, to be for the benefit of such person that a lease or underlease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or otherwise improving the same, or for farming or other purposes, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to order and direct the committee of the estate of such lunatic to make such lease of the land of such persons respectively, or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants as the Lord Chancellor, intrusted as aforesaid, shall direct." And "when any person who shall have contracted to sell, mortgage, let, divide, exchange, or otherwise dispose of any land, shall afterwards become lunatic, and a specific performance of such contract, either wholly, or so far as the same shall remain to be performed, shall have been decreed by the Court of Chancery, either before or after such lunacy, it shall be lawful for the committee of the estate of such lunatic, in the place of such lunatic, by the direction of the Lord Chancellor, intrusted as aforesaid, to be signified by an order to be made on the petition of the plaintiff or any of the plaintiffs in such suit, to convey such land, in pursuance of such decree, to such person and in such manner as the said Lord Chancellor, intrusted as aforesaid, shall direct; and the purchase-money, or so much thereof as remains unpaid, shall be paid to the committee of such lunatic."

The petition was unopposed. The Lord Chancellor, after directing the petition to stand over for some decision in favour of the application, said, that the sections referred to did not empower him to make the order asked for, and, no authority being produced, refused the application.

April 30.—Moire v. Taylor and others.—Part heard.

May 8.—Mather v. Mather v. Kelcey v. Mather.—Ct. ad. suit.

May 8.—Buckell v. Gaudell.—Part heard.

Master of the Rolls.

Blakeney v. Dufaur. May 1, 1851.

Partnership as Attorneys and Solicitors.—*Proceedings in Reference to Appointment of Receiver.*

Master to approve of a proper person as a receiver, to get in the outstanding debts of a partnership, which had been dissolved by the defendant under the articles, on the alleged ground of the plaintiff's neglecting to attend to the business, as attorneys and solicitors, with liberty to either party to propose himself, although it was sworn and not denied that the partnership was greatly indebted to the defendant, and that the outstanding assets were insufficient to pay the debt.

THIS was an application for the appointment of a receiver to get in the outstanding assets of the partnership, which had been carried on by the defendant and the plaintiff as solicitors, but which had been dissolved on March 4 last, and for an injunction to restrain the defendant from interfering therewith. It appeared that the partnership was indebted to the defendant, and that the outstanding debts would be insufficient to pay him.

Roswell and Elderton, for the plaintiff, in support, on the ground that the defendant had improperly excluded the plaintiff from the partnership.

Walpole and Smythe, for the defendant, contra, on the ground that the plaintiff had been properly excluded, under the powers of the articles of partnership, for neglecting to attend to the partnership business.

The Master of the Rolls observed, that having regard to the imperfect state of the materials before him, the partnership property should be protected, and it was therefore referred to the Master to approve of a proper person to be appointed as a receiver, with liberty to either party to propose himself; the rights of the parties to be determined at the hearing.

April 30, May 1.—Hele v. Lord Bealey and others.—Part heard.

May 1.—Pooley v. Budd.—Demurrer overruled.

1.—Oldfield v. Cobbett.—Order nisi for supersedeas of writ of attachment refused.

April 30, May 5.—Whichey v. Hume.—Judgment as to costs.

May 3, 5, 6.—Tristram v. Hardy and others.—Part heard.

6.—Palmer v. Great Northern Railway Company and others.—Interim order for injunction.

Vice-Chancellor Knight Bruce.

In re Worcester Corn Exchange Company.

April 25, 1851.

WINDING-UP AMENDMENT ACT.—MASTER'S DISCRETION TO DISPENSE WITH ADVERTISEMENTS.—PRELIMINARY REFERENCE.

An order was made for the winding up of a company, the Master having reported on a preliminary reference, as to the expediency of the winding up, that it would be proper

and held, that the Master had power to dispense with advertisements under the 12 & 13 Vict. c. 108, s. 16, all the directors having been summoned and the secretary consenting to the order.

There was a petition to wind up this company under the 11 & 12 Vict. c. 45, and the 12 & 13 Vict. c. 108, a preliminary reference to Master Kinderley as to the expediency of winding up its affairs having been reported on in favour of the order now sought. It appeared that no advertisement of the preliminary order of reference had been inserted under the 12 & 13 Vict. c. 108, s. 16, which provides, "That it shall be lawful for the Master, in such cases as he thinks fit, to dispense with any advertisements required by the said act to be made of any call or for any other proceedings by or before the Master: provided that the said Master shall not dispense with the advertisement of an intended call or other proceeding until he is satisfied that notice has been given to each of the several contributors intended to be included in such call or affected by such proceeding, that it is intended to include him therein or affect him thereby; and that, notwithstanding anything in the said act contained, no proceedings in any action by a creditor shall be stayed by reason that an advertisement has not been published under the said act requiring creditors to come in and prove their debts and demands before the Master."

All the directors had been summoned.

Some in support; Hayskoun, for the secretary of the company, did not oppose.

The Vice-Chancellor made the order, the Master being satisfied on the question of the necessity for advertisements.

In re Hough's Estate, April 26, 1851.

NEW TRUSTEES.—PETITION FOR APPOINTMENT OF A MAJORITY OF CESTUI QUE TRUSTS.—ADMINISTRATION CLAIM.

The usual order of reference was made for the appointment of new trustees, on petition presented by 30 of the persons (who were the majority) entitled to the trust funds, notwithstanding a claim was filed under which the property, it was alleged by some of the other parties, could be administered without such appointment.

Freeling appeared in support of this petition which was presented by 30 persons, the great nephews and nieces of the testator entitled to the estate, which was devised to trustees on trust for the great nephews and nieces, for the appointment of new trustees.

Smyth, on behalf of certain parties also interested, on the ground that a claim had been filed whereby the estate could be administered without the appointment of trustees, and that the petition should stand over until the hearing of the claim.

The Vice-Chancellor, however, directed a reference for the appointment of new trustees,

observing that it was proper, inasmuch as a large majority of the persons interested desired the appointment.

In re Rugby, Warwick, and Worcester Railway Company, *ex parte* Freese, May 1, 1851.

WINDING-UP ACP. — CALL FOR COSTS. — MASTER'S JURISDICTION.

Held, that the Master has authority under the 11 & 12 Vict. c. 45, to make calls for the costs of winding-up, &c. of a company, on the contributories; and, *semble*, a call of 4s. was allowed, it not being objected to as improper, although the bill of costs had not been taxed.

This was a petition by way of appeal from the decision of the Master, to whom the matter of the winding-up of this company had been referred, making a call of 4s. per share for payment of costs.

Russell and Field, for the appellant, *Mrs. Freese*, referred to the 11 & 12 Vict. c. 45, s. 83, which provides, that "at any time before the whole of the assets of such company shall have been collected or converted, and if the assets remaining to be collected or converted shall not be capable of being immediately realized, although such assets may not appear to be insufficient, and also after the assets of the company shall have been wholly exhausted, he shall be lawful for the Master from time to time to make calls on the contributories or on such individual contributories or classes of contributories as he may think proper (but so far only as such contributories respectively shall be liable at law or in equity to pay the same, as well for raising such amount as may be necessary to pay the debts or liabilities or any of the debts or liabilities of such company, or any part thereof, or the costs, charges, and expenses of winding up the same, &c. and s. 108, that "the general costs of winding up the estate, and the costs of proving debts and of trying issues, and of all other matters in which creditors, or any particular contributories or classes of contributories, or alleged contributories of such company shall be interested, shall be in the discretion of the Master, and shall be paid either out of the general estate of such company, or out of any portion of the general estate, and shall be debited or credited to any individual contributories or classes of contributories, or shall be subject to, with or without the Master shall from time to time direct."

The Vice-Chancellor, without calling on Swanston and W. T. S. Davies, for the respondent, held, that the Master had jurisdiction to make the order, although there was no taxation, the amount not being shown to be improper, or the parties on whom the call was made not liable.

Ex parte Higginson, in re Higginson — Appeal dismissed from the Commissioners' Lodging, May 3, 1851.

—Order under 13 & 14 Vict. c. 60, s. 35, discharged so far as directing right to stock should be exercised by new trustees in obtaining a transfer, and declaration that right to call for transfer should be vested in such new trustees.

—3.—*Wallworth v. Holt*, in *re Imperial Bank of England*—Order for payment out of Court of fund to official manager, the costs of defendants against whom bill was dismissed to be paid out of fund.

—5.—*Ex parte Tunstall*, in *re Tunstall*—Order on petition by tenant for life for appointment of new trustees.

—5.—*Harvey v. Palmer*—Decree in favour of plaintiffs on claim filed by assignees of legatee.

Vice-Chancellor Lord Cranworth.

In *re Barnet and North Metropolitan Junction Railway Company*, *ex parte Nicolay*. April 28, 1851.

WINDING-UP ACT. — PROVISIONAL COMMITTEE-MAN. — CONTRIBUTORY.

On appeal from, and affirming with costs, the decision of the Master, one N. was held liable as a contributory, to whom the secretary of the company had written as a provisional committee-man asking him whether he would take 100 shares which the managing directors had agreed should be the amount of shares allotted to each provisional committee-man, and N. having written back accepting the allotment, but not describing himself as a provisional committee-man, and the secretary having written with the formal allotment of the shares,—notwithstanding his name had not been published in the prospectus as a provisional committee-man.

THIS was a motion on appeal from the Master including the name of the appellant on the list of contributories for 100 shares in this company. It appeared that the secretary of the company sent to Mr. Nicolay a letter dated 3rd October, 1845, addressed to him as a provisional committee-man, and stating that the committee of management had directed him to inquire whether he would take 100 shares which they had agreed should be the amount of shares allotted to each provisional committee-man, and requesting to have an accompanying form returned, filled up and on the 6th the appellant wrote accepting the allotment, and saying that his name might be entered for 100 shares: and the secretary accordingly sent a formal allotment of such shares.

Rosburgh in support, on the ground that Mr. Nicolay had not paid any deposit, nor was there any proof of his name having appeared in the prospectuses, and also that the case was distinguishable from *Upfill's case*, (2 H. of L. 674), the letter of acceptance being there signed "P. C."

Bethell and Glasse, for the official manager, were not called on.

The Vice-Chancellor said, that as the shares had been allotted to the appellant as a provisional committee-man, and had been accepted without repudiating that character, the case was not distinguishable from that of *Upfill's*, and the motion must be refused with costs.

April 30.—*Tanner v. Sibley*—Cur. ad. vult.

—30.—In *re Bliss's Trustees*—Petition dismissed with costs.

May 1.—In *re Imperial Bank of England, ex parte Woolley*—Appeal dismissed from Master excluding respondent's name from list of contributories.—Costs out of estate.

—1.—In *re Same, ex parte Aspinall*—The like.

—2.—In *re Direct Oxford, Reading, and Brighton Railway Company, ex parte Upfill*—Cur. ad. vult.

—5.—In *re Direct Birmingham and Brighton Railway Company, ex parte Onions*—Issues directed at law.

—5.—In *re Same, ex parte Thorn*—The like.

—5.—In *re Same, ex parte Hunter*—Motion refused, with costs, to strike out name from list of contributories.

—3, 5.—*Williams v. Shrewsbury and Birmingham Railway Company and others*—Motion for injunction refused with costs.

—6.—*Digby v. Boycott*—Petition in the nature of exceptions allowed to finding of the Master as to completion of investment of trust funds.

Vice-Chancellor Turner.

April 30.—*Johns v. Mason*—Claim dismissed without costs.

May 1.—*Squire v. Ford and others*—Judgment in favour of plaintiff's claim of priority over the other creditors.

—3, 5, 6.—*North Staffordshire Railway Company v. Whieldon*—Bill dismissed with costs.

Court at Queen's Bench.

Clements v. Francham. April 24, 1851.

ACTION FOR FALSE IMPRISONMENT.—JUDGMENT BY DEFAULT.—EVIDENCE.—MALICE.—NEW TRIAL.

On the trial of a writ of inquiry in an action for false imprisonment, it appeared that the plaintiff had been taken in custody at D. by two policemen in uniform, and taken to B. from whence he was delivered at Bury gaol by the defendant, the superintendent of police for the D. district, and detained there for 36 weeks, until released upon the detaining creditor being paid. The presiding judge having directed the jury that there was no evidence to connect the defendant with the arrest at D., or of malice, and that the defendant, by letting judgment go by default, only admitted the least possible amount of imprisonment sufficient to support the declaration: Held, on motion

for a new trial on the ground of misdirection, the plaintiff having only obtained 20s. damages, no misdirection.

THIS action was brought for false imprisonment against the superintendent of police for the Santon Downham district, in Suffolk, and the defendant having suffered judgment to go by default, the writ of inquiry was executed before Erle, J., at the last sittings for the county. It appeared that the plaintiff was on a visit to his brother-in-law at Santon Downham, and was seized by two policemen in uniform, handcuffed, and taken to Brandon, and that he was delivered by the defendant, the same evening, at Bury gaol, and remained there for 36 weeks until he was liberated by payment of 10l. by a charitable association to the detaining creditor. On the trial, Mr. Justice Erle having told the jury that there was no evidence to connect the defendant with the arrest at Santon Downham, that there was no evidence of malice, and that it was only by letting judgment go by default the least possible period of imprisonment could be admitted to support the declaration, and a verdict for 20s. damages having been returned for the plaintiff.

Keene now moved for a rule nisi to set aside the verdict and for a new trial on the ground of misdirection, and that the delivery at Bury gaol was evidence of the defendant's connexion with the arrest, that the plaintiff was not bound to show malice, and that if the defendant intended to rely, in mitigation of damages, on any subsequent detainer, he should have proved it, and that as he had not done so, the plaintiff was entitled to substantial damages.

The Court held, there had been no misdirection, and refused the rule.

Bond v. Manning. April 28, 1851.

COUNTY COURTS.—PROHIBITION.—REPLEVIN PLAINT.—COLLUSION.

A writ of prohibition to the judge of a County Court was refused against proceeding in a replevin plaint in which the defendant, the bailiff of one S., was sworn to be in collusion with the plaintiff, who obtained a verdict, the defendant having obtained and subsequently waived a certiorari to remove the case into the Superior Courts; and held, that the judge was right in refusing to hear S. in the case as not being a party to the plaint.

THIS was a motion for a writ of prohibition to the Judge of the Bloomsbury County Court against further proceedings in this plaint, which was in replevin against the bailiff of a Mr. Saunders, who was sworn in the affidavits to be colluding with the plaintiff, and who had obtained a certiorari on behalf of Saunders to remove the case into the Superior Courts, but, upon application being made to fix the amount of bail had waived his certiorari. The judge having declined, on the application of Saunders, to be heard in the plaint, to hear him as he was not a party to the suit, and

the plaintiff having obtained a verdict for 35l., this motion was made.

Pigott in support.

The Court said, that the judge of the County Court was right in refusing to hear anybody but those who were parties to the suit, and that if the certiorari had been properly lodged, the judge was guilty of contempt in proceeding, or if not, that the remedy was against the bailiff, and refused the rule accordingly.

April 30.—*Regina v. Dean and Chapter of Rochester*—Judgment for defendants.

— 30.—*Regina v. London and North Western Railway Company*—Cur. ad. vult.

— 30.—*Doe dem. Westbrook v. Johnson*—Rule enlarged.

May 1.—*Sherlock v. Fallager*—Rule refused for new trial.

— 1.—*Milvain v. Cassavetti*—Rule refused for new trial on the ground of misdirection.

— 1.—*Doe dem. Tatham v. Catamore*—Rule refused for new trial.

— 1.—*Doe dem. Lord Ashburnham v. Michael*—Rule nisi for new trial.

— 1.—*Doe dem. Eaton v. Swansea Waterworks Company*—Rule nisi for new trial.

— 1.—*Doe dem. Jones v. Wilks*—Rule nisi for new trial.

— 1.—*Prettyman v. Colegrave*—Rule refused for new trial on the ground of misdirection.

— 2.—*Sunderland Marine Insurance Company v. Kearney and another*—Judgment affirmed of the Court of Common Pleas of the County Palatine of Durham.

— 3.—*Regina v. Bills*—Rule absolute to quash rate for repair of sea walls.

— 3.—*Regina v. Welch*—Rule absolute to quash conviction under registration of Designs' Act.

— 5.—*Doe dem. Shallcross v. Palmer*—Rule discharged to enter verdict for lessor of plaintiff.

— 5.—*Ex parte W. H. Barber*—Motion for rule nisi. Cur. ad. vult.

— 5.—*Regina v. Hewitt and others*—Rule refused to set aside side-bar rule for taxation of costs herein.

Queen's Bench Practice Court.

April 30.—*Doe dem. Westbrook v. Johnson*—Application to be made to full Court.

— 30.—*Cox v. Pritchard*—Rule discharged with costs for discharge of defendant out of custody.

— 30.—*Regina v. York, Newcastle, and Berwick Railway Company*—Rule nisi for mandamus on defendants to make and complete certain railways.

— 30.—*Regina v. Martin and others*—Bail put in indictment.

May 1.—*Regina v. Poor Lido Guardians of St. Martin's-in-the-Fields*—Rule nisi for mandamus to elect clerk to board.

— 2.—*Regina v. Ingham*—Rule nisi on police magistrate to hear information under Metropolitan Paving Act.

— 3.—*Regina v. West*—Rule nisi for certi-

orari to bring no case under Registration of Design Act.

3. *Regina v. Scott*—Rule nisi for criminal information for libel.

4. *Regina v. Chapman*—Rule nisi for criminal information for libel.

6. *Dee dem. Noble v. Roe*—Rule nisi for judgment against appeal ejector.

Court of Common Pleas.

Barry v. Deane—April 24, at which time the case was heard.

CLUB AUTHORITY TO PLEDGE CREDIT OF MEMBERS.—CONSTRUCTION OF RESOLUTION.—QUESTION FOR JURY.

A rule nisi for a new trial was refused on the ground of the judge who presided at the trial having left its construction to the jury of an action brought by the chairman of the committee of a club to recover from a member of the club the amount of his share of a sum which he had borrowed for the club under a resolution passed at a meeting of the members, at which the defendant was present, as follows: That a loan of £1,000 is necessary to free the society from outstanding difficulties, and place the establishment of the society upon a suitable footing in their new house, and that the committee be empowered to raise this sum on the guarantee of the society in the manner most advantageous to the society, and that this meeting further pledges itself to meet heartily the views of the committee in subscribing to the proposed debentures.

At a general meeting of the members of the Colonial Club, of which the plaintiff and defendant were members, held on June 1, 1872, it was resolved, that "a loan of £1,000 is necessary to free the society from outstanding liabilities and place the establishment of the society upon a suitable footing in their new house, and that the committee be empowered to raise this sum on the guarantee of the society in the manner most advantageous to the society, and that this meeting further pledges itself to meet heartily the views of the committee in subscribing to the proposed debentures." The plaintiff accordingly borrowed the sum from the Commercial Bank of London, and having repaid the loan brought this action against the defendant, who was present at the above meeting, to recover the amount of his share. The jury having at the trial before Jervis, L. C. J., returned a verdict for the defendant on the ground he had not authorised the committee to pledge his credit, this motion was made for a new trial.

Byles, S. J., in support, on the ground that the presiding judge should have construed the effect of the resolution, and not left it to the jury to do so.

The Court, however, held there was no misdirection, and refused the rule.

A writ of Habeas Corpus was granted on the ground that the defendant was not lawfully detained.

May 1.—*Whitely v. Gledhill and others*—Rule discharged on leave reserved to enter verdict for defendants.

1.—*Abley v. Dale*—Cur. ad. vult.

2.—*Barclay v. Clarendon and others v. Parish of St. James's, Westminster*—On special case from Middlesex Sessions, the "London Library" held liable to be taxed, and not exempt under the 6 & 7 Vict. c. 36.

5.—*Bate v. Parkinson and another*—Rule discharged to set aside nonsuit and enter verdict for plaintiff.

5.—*Boden v. French and others*—Rule discharged to set aside nonsuit and for new trial.

6.—*Jane Dawson*—Stand over.

6.—*Rosita v. Gurney*—Part heard.

Exchequer.

Dalmeida v. Jackson—April 23, 1881.

BILL OF LADING.—INTERPLEADER ISSUE.—INSOLVENCY OF TRANSFEREE.

Held, on motion for, and refusing, on the ground of misdirection, a rule for a new trial of an issue, under the Interpleader Act, that the transfer of bills of lading from an insolvent is not invalidated by the mere fact of suspicion on behalf of the transferee of such insolvency, that being insufficient to indicate mala fides; and that the intention of the insolvent alone, without that of the transferee, to defraud the consignee of the goods, is also insufficient to set aside the transfer, and, as to the transfer, should be shown to be known of the insolvency.

This was an issue under the Interpleader Act, as to whether the plaintiffs, merchants at Mobile and New Orleans in America, were entitled to the possession of 200 bales of cotton which had been sent by them to their agent, named Barber, at Liverpool, and which had been sold before their arrival to one Chadwick, to be paid for by drafts at 60 days, and the bills of lading handed over to him. Chadwick, on Oct. 4, and before the arrival of the cotton, endorsed the bills of lading to the defendant, and having become bankrupt, the plaintiffs' agent took possession of the cotton on their behalf. At the trial before Mr. Baron Platt, at the last Liverpool Assizes, the question left to the jury was, whether they believed the defendant had, at the time of the bills being indorsed, any suspicion of the solvency of Chadwick; and in answer to questions, told the jury that suspicion alone of Chadwick's insolvency was insufficient evidence of mala fides, and that an intention to cheat the consignee on the part of Chadwick alone was also insufficient to defeat the transaction, and added that it was necessary for the plaintiffs to make out affirmatively that the defendant knew or knew of Chadwick's insolvency. The defendant obtained a verdict, and this motion was made for a new trial on the ground that the judge had misdirected the jury as to the burden of proof in an action brought as to the cargo.

Knowles, Q. C., in support on the ground that absolute certainty was necessary, and that strong suspicion was sufficient to avoid the transaction.

The Court said, there had been no interdiction, and that the question of the jury had been properly answered by the learned Baron, and the rule was accordingly refused.

May 1.—Sproston v. Davis.—Rule refused for judgment non obstante veredicto, or for new trial.

2.—Blund v. Crowley and others.—Cur. ad. vult.

3.—Skipper v. Great Western Railway Company.—Rule nisi for new trial.

3.—Longmead and wife v. Holliday.—Cur. ad. vult.

3.—Woods v. Platts.—Rule nisi on leave reserved to set aside the verdict for plaintiff, and enter a nonsuit.

3.—Cragner v. Noble.—Rule refused to set aside plea of plaintiff's bankruptcy pleaded at trial after judgment for plaintiff on two other pleas, and such plea held admissible notwithstanding the previous pleas.

3.—Greek v. Cartwright.—Rule refused.

3.—Fries v. Woodcock.—Rule refused for new trial on the ground of verdict being against evidence, but granted on the ground of misdirection.

3.—Loche v. Baker.—Rule refused.

3.—Dee dem. Heltjer v. King.—Rule nisi granted.

3.—Newton v. Voucher.—Rule granted.

3.—Kerle v. Waters.—Rule nisi refused.

3.—Harding v. Hutchinson.—Rule refused.

3.—Hird v. Haley.—Rule refused.

3.—Ridgway v. Lord Stafford.—Rule refused.

5.—Duke of Buckingham v. Commissioners of Inland Revenue.—Cur. ad. vult.

6.—Lanaghan v. Capens.—Cur. ad. vult.

Court of Rachequer Chamber.

Regina v. Ford and others. April 26, 1851.

WITNESS.—CROSS EXAMINATION AND RE-EXAMINATION BEFORE MAGISTRATE.—PRACTICE.

Held, that the counsel for a prisoner ought not to put into the hands of a witness the depositions he made before a magistrate, and desire him to read it, and ask whether, having read the depositions, he still persevered in the statement he had first made in Court, but the course is either to read the depositions at the time of cross-examining the witness, or to reserve it and give it in evidence for the prisoner.

In this case an objection had been made on the trial to the counsel for the prisoners having put into the hands of one of the witnesses the depositions made before a magistrate, and after desiring him to read it, asked whether he persevered in the statement he had just made. It appeared that this course had been allowed to be adopted, on the ground of some other judges having allowed it.

The Court now said, that in a case before *Parke, B.* and *Coltman, J.*, the practice had been allowed, but that doubts having been entertained as to its expediency, the opinion of the learned judges was taken on the point, and the course to be adopted was held to be, either to read the deposition at the time of cross-examining the witness, or to reserve it and put it in evidence on behalf of the prisoner, and that as the question was therefore *res judicata*, it was unnecessary to argue it.

May 3.—Regina v. Elements and others.—Conviction affirmed.

3.—Regina v. Hill.—Conviction affirmed.

3.—Regina v. Warbell and others.—Conviction affirmed.

3.—Regina v. Oddy.—Conviction quashed.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Regina v. Connell Appants.

ADMIRALTY COURT.—*Collinson v. Brier, petena. Damages, for damaging vessel and referring damages to registrar and merchants.*—Where the owners of a vessel and part of the cargo, lost in a collision, brought an action in the Admiralty Court, against the damaging vessel, and obtained a decree for the condemnation of the ship, referring the amount of damages to the registrar and merchants, who were to report thereon, and on the same day on which the report was made, the owners of the remaining portion of the cargo brought an action against the

damaging vessel, and applied to the Court to be let in to participate rateably in the proceeds of the condemned ship remaining in the registry; it was held:—

1st. That the Admiralty Court in such circumstances, had no jurisdiction to decree a rateable distribution, and thereby take away the priority of the *prior petens*; and

2ndly. That the decree for damage and reference to the registrar and merchants, was a definitive sentence. *Barrow v. Hane, 6 Moore, 56.*

2. Equitable jurisdiction.—Although in the decision of cases, properly within the jurisdiction

tion of the Court of Admiralty, equitable considerations ought to have weight, yet that Court has not jurisdiction to do all that a Court of Equity might do, in suits instituted by persons, suing either for themselves or on behalf of themselves and others, for administration of assets or distribution of a common fund. *Bernard v. Hyne*, 6 Moore, 36.

AGENCY.

See *Idem*.

CHARITABLE FUNDS.

Advocate-General of Madras necessary to represent Crown in informations for administration of charitable funds.—By the 53 Geo. 3, c. 155, s. 111, the Advocate-General is entitled to appear and represent the Crown in informations for the administration of charitable funds. *Attorney-General v. Brodie*, 6 Moore, 12.

CHURCH.

Jurisdiction.—Origin of the jurisdiction of the Church, in cases of testament and intestacy, not distinctly traceable.

The Church never had, at any time, in this country, by law, any beneficial interest in the property of intestates, but merely the right or duty of jurisdiction and administration, and the right of possession, for the latter purposes. *Dyke v. Walford*, 5 Moore, 434.

CODICIL.

Actual reading over to testator not necessary.—*Suspicious circumstances.*—A codicil, which varied the bequests contained in the will of the testator, to the benefit of the drawer, and executed at a time when the testator was supposed to be dying, in the absence of proof of the knowledge by the testator of its contents, pronounced against.

Proof of the actual reading over of the instrument to the testator, before execution, is not necessary. *Mitchell v. Thomas*, 6 Moore, 137.

See *Will*.

COLLISION.

See *Admiralty Court*.

CONDITIONS, ILLEGAL.

Legal conditions may be enforced, though illegal cannot.—If an instrument contains distinct engagements, by which a party binds himself to do certain acts, some of which are legal, and some illegal at Common Law; the performance of those which are legal may be enforced, though those which are illegal cannot. *Bank of Australasia v. Breillart*, 6 Moore, 152.

CONTRACT OF SALE.

What will pass property to vendor.—*Acceptance of part of goods by vendor.*—*Old French law in Canada.*—Messrs. H. L. & Co., of Montreal, entered into a written contract with Messrs. L. & Co., for the sale of a quantity of red pine timber, then lying above the rapids, Ottawa River, stated to consist of 1,391 pieces, measuring 50,000 feet, more or less, to be deliverable at a certain boom at Quebec, on or

before the 15th of June, then next, and to be paid for by the purchasers' promissory notes of ninety days from that date, at the rate of 9½d. per foot, measured off; if the quantity turned out more than above stated, the surplus was to be paid for by the purchasers at 9½d. per foot, on delivery; and, if it fell short, the difference was to be refunded by the sellers. The price of the 50,000 feet, at the agreed rate, was paid by Messrs. L. & Co., according to the terms of the contract. The timber was not delivered on the day prescribed in the contract of sale, and when it arrived at Quebec and before it was measured and delivered, the raft was broken up by a storm, whereby the greater part of the timber was dispersed and lost. Messrs. L. & Co., after the storm, collected such of the timber as could be saved, paid salvage for it, and applied the timber saved to their own use. In an action brought by Messrs. L. & Co. against Messrs. H. L. & Co., to recover the amount paid on their promissory notes, and for a breach of the contract, and for the difference between the contract price of 9½d. per foot and 10½d. per foot, the market price when the timber was to have been delivered.

Held, by the Judicial Committee, affirming the judgment of the Court of Appeal in Lower Canada,---

1. That the action was maintainable.
2. That, by the terms of the contract, until the measurement and delivery of the timber was made, the sale was not complete; and that the transfer of the property was postponed until the measurement at the delivery; and that the risk remained with the sellers.
3. That the taking possession of a part of the timber by Messrs. L. & Co., after the day mentioned for the delivery thereof in the contract, and not at the place, could not be considered as an acceptance of the whole; nor could it be considered as an admission that the property in the timber passed to them before the storm which broke up the raft.

The old French law in force in Lower Canada, grounded on the civil law, is in substance the same as the law of England upon this point. *Logan v. Le Meurquier*, 6 Moore, 116.

CROWN PREROGATIVE.

See *Lancaster County Palatine*.

DUTCH ROMAN LAW.

Promissory note.—*Joint action by holder against maker and indorser.*—By the Dutch Roman Law, in force in British Guiana, a joint action by the holder of a promissory note will lie against the maker and indorser of such note. *Chapman v. British Guiana Bank*, 6 Moore, 23.

JOINT STOCK COMPANY.

Power of directors to borrow money.—*Binding on shareholders.*—*Trial at bar.*—By a deed of settlement, a joint-stock banking company, called "The Bank of Australia," was established as a bank of issue and deposit, at Sydney, in New South Wales. The deed contained

clauses conferring powers upon the directors, "for the better management of this concern of the said company," whereby it was declared that they shall have, and be expressly invested with, "full power and authority to superintend, order, conduct, regulate, and manage all and singular the affairs and business of the said company, to the best of their discretion and judgment, under and subject to the provision therein-after contained." Such board of directors were further empowered to "devise and make such provisions, rules, orders and regulations, touching the government, carrying on, and management of the affairs of the said company, the same not being repugnant to the general rules and regulations therein contained, as they should think expedient." In the year 1843, the Bank of Australasia became involved in pecuniary difficulties, whereupon the directors at Sydney applied to the Bank of Australasia for a loan, and borrowed from that bank at various times, the sum of 154,000*l.* for which the directors gave their promissory note. Upon the negotiation of this loan, the directors of the Bank of Australasia entered into an agreement with the Bank of Australasia, whereby they stipulated that the Bank of Australia should cease to be a bank of issue, deposit and discount, and should become a loan company; and that no transfer of shares or stock should be made without the consent of the Bank of Australasia; they also agreed to wind up and get in their capital as a loan company. Payment of the note of 154,000*l.* was refused by the shareholders of the Bank of Australia, on the ground that the stipulations contained in the agreement were *ultra vires* the directors. On an action brought by the Bank of Australasia on the promissory note against the chairman of the Bank of Australia, the Supreme Court at New South Wales, at a trial at bar, found for the defendant. Upon appeal, — *Held*, by the Judicial Committee (reversing the verdict and judgment of the Supreme Court), —

1st. That the directors of the Bank of Australia had the powers of managing partners in an ordinary banking partnership, and that, amongst these, was the power of borrowing money for the purpose of discharging the existing liabilities of the bank till the assets should be realised, and of discontinuing the bank if they thought conduct essential to the interests of the shareholders.

2ndly. That the circumstances of the engagements of the directors to repay the loan being accompanied by other stipulations, some of which were *ultra vires*, did not discharge the bank from liability to repay the loan, as the only effect of those stipulations was, that they could not be enforced. *Bank of Australasia v. Brillat*, 6 Moore, 152.

Cases cited in the judgment: *Lane v. Williams*, 2 Vern. 377; *Thorne v. Bromley*, 2 G. & W. 425.

JUDGE, COMPLAINT AGAINST.

Memo. to Crown by representatives of Granada. — *Case of time*. — On a me-

morial, presented to the Queen in Council by the House of Assembly of the Island of Granada, complaining of the judicial conduct of the Chief Justice of that island, as illegal and oppressive, being referred to the Judicial Committee of the Privy Council, it appeared from the evidence, that during the fourteen years in which the Chief Justice had held office, he had displayed on the bench several instances of intemperate, and in some cases illegal conduct; but these acts were committed many years before the presentation of the memorial, without any complaint at the time of the Chief Justice's misconduct; the only act of recent date complained of being the fining of two magistrates for taking depositions in the third instead of the first person. In these circumstances, the Judicial Committee reported to the Crown that, having regard to the length of time which had elapsed since all the acts complained of, except that of fining the magistrates, (which, though erroneous and improper, had been committed by the Chief Justice in the execution of his duty,) they could not, sitting judicially, advise the Crown to remove the Chief Justice for misconduct. *Representatives of the Island of Granada v. Sanderson*, 6 Moore, 38.

JUDGE, REMOVAL OF.

New South Wales. — The statute 22 Geo. 3. c. 75, empowering the governor and council of a colony or plantation to remove persons holding patent offices for neglect or misbehaviour, includes judicial offices. But the Governor and Council of New South Wales, having removed a judge, without giving him notice, or affording him an opportunity of answering the charges brought against him, and upon which the order of removal was founded, such order was held illegal, and reversed. *Willis v. Sir G. Gipps*, 5 Moore, 379.

JUDGMENT CREDITOR.

Quære, whether a judgment creditor is a necessary party to a bill filed by a mortgagee, where the practice of the Court is to decree a sale instead of a foreclosure? *Gordon v. Horsfall*, 5 Moore, 395.

Case cited in the judgment: *Rolleston v. Morton*, 1 Con. & Law. 253; 1 Dru. & War. 171.

LANCASTER, COUNTY PALATINE.

Intestate Bastard. — *Jura Regalia*. — *Prerogative of the Crown*. — The right to goods belonging to persons dying intestate, without leaving husband or widow, and without kindred, as *bona vacantia*, has, from the earliest times, been vested in the King in right of his Crown.

In 1377, Edward 3, by charter, granted to his son, John of Gaunt, Duke of Lancaster, the county of Lancaster as a county palatine, with in his Duchy of Lancaster, "*et quæcunque alia libertates et Jura Regalia ad Comitum Palatinum pertinentia, adeo integrè et liberè sicut Comes Cestrie infra eundem Comitatum Cestrie dinoscitur obtinere*." By subsequent charters and acts of parliament, the duchy and such

-mistakenly, and those of the Queen, being originally granted, with its hereditary, to her Majesty, by a title distinct from her Crown: Held, that the words of the charter carried the right to her Majesty, as Queen, to the county palatine, and that the Queen, being entitled to the Duchy of Lancaster, was entitled to the goods of a bastard intestate, without next of kin, in right of her Duchy of Lancaster, and administration granted to the nominee of her Majesty in right of her Duchy, to and to the next of kin to her.

Held, also, that it was not necessary for the Duke of Lancaster to show an enjoyment of such right by the Earl of Chester, as, in the absence of evidence to the contrary, the Court would presume the enjoyment of the right by the Earl of Chester. *Duke of Lancaster v. Earl of Chester*, 10 Moore, 43.

Privy Council Appeals.—*Case of Newfound-land*, 10 Moore, 43. Messrs. D. and L. of Jamaica, shipped a cargo of fish on board a vessel, chartered by H. Messrs. D. and L. Messrs. D. and L. requested to S. and L. Messrs. D. and L. were, at that time, indebted to S. and L. for large advances made them; and, after they had ordered the cargo, they applied to S. and L. for a further advance, informing them that they might expect the cargo, and authorizing them to sell it on their account, and give them credit for the proceeds. S. and L. made the required advance. No agreement was reduced into writing as to the pledge of the cargo. Before the arrival of the vessel, Messrs. D. and L. in circumstances, informed S. and L. that, in the circumstances of the firm, they could not think of receiving the cargo; and on the arrival of the vessel, Messrs. D. and L. by letter to S. and L., repeated their determination not to receive the cargo, and desired them to sell it to render the sales to them, and to remit the proceeds, after deducting freight, due to H. and Co. Messrs. D. and L. wrote to the same effect to Messrs. H. and Co., who, by letter, acquiesced in this repudiation. (The letter did not arrive in Jamaica until some months after the sale.) S. and L. offered no objection to Messrs. D. and L. proposal, and sold the cargo; they did not then claim any lien on the cargo; but they afterwards refused to abscond for the proceeds to H. and Co., claiming a lien on the goods as their factor, and creditors of Messrs. D. and L. Held, by the Judicial Committee, upon a bill of exception to the judgment in an action of assumpsit, brought by H. and Co. against S. and L., that S. and L. having sold the cargo, under the direction of Messrs. D. and L., must be considered as the agents of H. and Co., and that, if they had originally any lien on the cargo, they lost it by their conduct in selling it. *See* *Case of Newfound-land*, 10 Moore, 43.

Equitable jurisdiction of Supreme Court over charities.—*See* *Supreme Court at Madras* (established by the Madras Charter of 1800)

has an equitable jurisdiction, similar to, and corresponding with, the equitable jurisdiction exercised by the Court of Chancery in England, even charities. *Attorney-General v. Brodie*, 6 Moore, 12.

2. *Order of Supreme Court dismissing taxing Master's report on appealable grievances.*—An order made by the judges of the Supreme Court of Madras, dismissing the Master of that Court from his office, for alleged official misconduct in the taxation of a bill of costs, reversed, upon appeal, by the Judicial Committee of the Privy Council. *See* *Attorney-General v. Brodie*, 6 Moore, 12.

Such an order being made by the Court as its own instance, is not an appealable grievance, within the Madras Charter of Justice of Dec. 1800. *Attorney-General v. Brodie*, 6 Moore, 12.

Practise on Appeals.—*See* *Attorney-General v. Brodie*, 6 Moore, 12.

1. *Leave to appeal.*—Where there are questions of law raised by the proceedings in the inferior Courts in the colonies, the Court will favour an application for leave to appeal, direct to the Queen in Council, under the 7 & 8 Vict. c. 69, without resorting to the intermediate Court of Appeal in the colony. *Harrison v. Scott*, 5 Moore, 357.

2. *Executors, notice to.*—The executors of B. parties to a suit in the Court of Chancery in Jamaica, had not been served with the appeal; the Court, before giving judgment, directed the appeal to stand over for six months, with liberty for them to attend, and be heard on the appeal. *Gordon v. Horsfall*, 5 Moore, 395.

3. *Leave granted to hear appeal, and order of Supreme Court of Madras reversed.*—An appeal having been allowed by the Court below, and referred by her Majesty to the Judicial Committee for adjudication in the ordinary way, their lordships, though of opinion that there existed no charter right of appeal, thought it a fit case for the allowance of a special appeal; and having heard the case upon the merits, directed a petition for special leave to appeal to be presented to her Majesty; which, on being referred to them, they recommended the allowance thereof, and that the appeal be placed in the same plight and condition as that originally referred to them. *In re Minchin*, 6 Moore, 43.

4. *Time after decree.*—Admitted appeal expires discharged. By the 35th section of the rules respecting appeals from the Vice-Admiralty Courts abroad, made under the authority of the statute 2 & 3 Will. 4. c. 51, all appeals are to be asserted within 15 days after the date of the decree appealed from. In March, 1846, a decree was pronounced by the Vice-Admiralty Court at St. Helena, restoring a vessel seized by a British cruiser for an alleged infraction of the Slave Trade Act, and referring the amount of costs and damages to the registrar. No appeal was asserted by the seizer's proctor, who attended before the registrar under the decree. In the month of December of that year, a petition of appeal was brought in by the Queen's proctor, on behalf

of the seisor, which the registrar (in consequence of the appeal not having been asserted within 15 days) refused to receive. On an application made *ex parte*, supported by affidavits stating that it was the seisor's proctor's ignorance of the rule for asserting the appeal, which alone prevented him from appealing, leave was given to appeal, subject to a counter-claim being presented by the respondent to dismiss the appeal. Upon an act on protest against the right of appeal by the respondent. *Held*, by the Judicial Committee, that there was no sufficient ground to enable them to allow the appeal. *Regina v. Jose Aloes Dias*; 6 Moore, 102.

5: *New South Wales*.—*Leave on appeal*.—*Power to appeal*.—Although no power is given by the Charter of Justice, or the act of parliament creating the Supreme Court of New South Wales, to allow an appeal to the Queen in Council from that Court, yet, to prevent a failure of justice, this Court will, upon a special petition for that purpose, grant leave to appeal from a judgment of that Court. *Bank of Australasia v. Breidat*; 6 Moore, 158.

6: *Power of error*.—*Common Law Jurisdiction*.—*Subsequent interest on judgment debt*.—*Held*, that the proceeding before the Judicial Committee from the verdict of the Supreme Court of New South Wales was in the nature of an appeal, and not a writ of error, and that this Court has power, under its Common Law jurisdiction, to give subsequent interest upon the judgment debt. *Bank of Australasia v. Breidat*; 6 Moore, 158.

PRIOR INCUMBRANCES.

1: *James*.—A judgment creditor cannot sustain a bill for a general administration and account against a prior incumbrancer, unless the bill contains an offer to redeem; and redemption is the only relief, in equity, to which a subsequent incumbrancer is entitled, as against a prior mortgagee. *See* *Bank of Australasia v. Breidat*.—If the bill is not for redemption, but for a totally different object, and is quite incapable of being used as a bill of redemption, an offer at the bar to redeem will not sustain the bill. *See* *Bank of Australasia v. Breidat*.—The practice of the Chancery Courts in England, to dispense a sale instead of a formal closure. *Gordon v. Hargrave*; 6 Moore, 308.

2: *James*.—*Bill by A. the mortgagee of the estate of B. against the executors of B.*—*Held*, that the bill was not for redemption, but for a totally different object, and is quite incapable of being used as a bill of redemption, an offer at the bar to redeem will not sustain the bill. *See* *Bank of Australasia v. Breidat*.

3: *James*.—*Bill by A. the mortgagee of the estate of B. against the executors of B.*—*Held*, that the bill was not for redemption, but for a totally different object, and is quite incapable of being used as a bill of redemption, an offer at the bar to redeem will not sustain the bill. *See* *Bank of Australasia v. Breidat*.

bill against the executors of B., and those claiming under his will, and the executor of the prior mortgage, on behalf of herself and other creditors of B. By the bill, she petitioned that her judgment gave her a prior lien to all as against part of the mortgaged estate, alleging that the judgment was given in respect of the purchase money of such part of the estate still remaining unpaid; she charged collusion between A. and the executors of B. in respect of their management of the mortgaged estate, and in the accounts, and prayed for a declaration of the priority of her lien over A's mortgage, as to part of the estate, and a due administration of the personal estate; and that if the personal estate should prove insufficient she should be first paid out of the proceeds of the estate on which she claimed a lien; and that in case A. should consent to join in the sale of the other real estates, he should be paid what, on taking the accounts, should be found due to him. A. filed a general demurrer, for want of equity, on the ground that there was no offer to redeem, which the Court overruled, A's suit being set down for hearing. G. filed a deposition, entitled in both causes, praying that the hearing in A's suit might be postponed until her cause was ready for hearing, and that they might be both heard together, and that she might be at liberty to intervene in A's suit. The Court made an order, granting her leave to intervene, and to object to the mortgagee's accounts. By the decree, made in A's suit, it was referred to the Master to take the accounts, and further directions were reserved, and upon the accounts, and afterwards took exceptions to the Master's report. The Court, upon the argument upon the exceptions, refused to make an order until it should be determined, at the hearing of G's suit, whether she had a valid claim on the mortgaged premises. At the hearing of G's suit, she failed to establish her priority over A's mortgage, and to prove collusion between him and the executors of B.; and the bill was dismissed as against A., with costs; but a decree was made in that suit, directing certain general administration accounts, A's suit was subsequently heard, upon further directions, in the absence of G., and the Master's report was confirmed, and a decree was made for payment of what was thereby found due to G. *Held*, on appeal, that the decree was not valid. 1st. That as G. had proved her judgment debt, she was entitled to a decree for relief against B., the obligors, executors; but that as she had not offered to redeem, this bill was properly dismissed as against A. the prior mortgagee, but, in regard to the personal estate. That the dismissal of the bill as against A., because she had not asked for possession relief, did not necessarily draw after it the dismissal of G's exceptions; that having established her debt, and the order for accounts, intervene being dismissed, she had a right to have her exceptions disposed of, and the orders confirming the Master's report, and on further directions made in her absence, were reversed.

PROMISSORY NOTE.

Notice to indorsee of dishonour.—What held to be a sufficient notice of dishonour to an indorsee of a promissory note. *Chapman v. British Guiana Bank* 6 Moore, 23.

See *Dutk v. London & Lancashire Bank*.

SALVAGE.

Services by steam tug.—*Vessel having licensed pilot on board.*—*Pilot's conduct and negligence.*—*Claim for towage.*—A sailing vessel, having a licensed pilot on board, got on the Goodwin Sands, but was rescued by a steam-tug, which, after rendering her salvage services, was employed to tow the vessel to the Downs, but in consequence of the misconduct of the pilot, and the negligence of the master of the steam-tug, the vessel was run ashore on the Sand-wich Flats; Held, in such circumstances, that the steam-tug had no claim for salvage, as the master of the steam-tug was not released from all responsibility respecting the direction of the vessel towed, by reason of a licensed pilot being on board, and that it was the joint duty of the pilot and the master of the tug to do their utmost for the safety of the ship.

Held, also, that the master of the steam-tug could not separate the towing of the vessel from his claim for salvage services for getting her off the sands, as it was one transaction of salvage. *Shervill v. Huddell*, 6 Moore, 90.

See *Quincy v. The Admiralty*, 10 Moore, 410.

Admiralty jurisdiction.—*Ships in equity.*—The statute 53 Geo. 3. c. 159, was passed for the protection of owners of ships, and applies only to bills in equity, and suits, or proceedings instituted by or on behalf of owners, and does not give equitable jurisdiction to the Court of Admiralty in a case where a proceeding is not taken under the statute by the owners of the ship. *Burrows v. Hyde*, 6 Moore, 255.

Ship's cargo.—*Distribution of proceeds.*—That the 15th section of stat. 53 Geo. 3. c. 159, may be applicable to suits for damages in the Admiralty Court, if accompanied by a proceeding on the part of the owners for their own protection, and may lead to a distribution pro rata of the proceeds of the ship among the claimants. *Burrows v. Hyde*, 6 Moore, 255.

SHIP REGISTRY ACT.

Ship, Indian legislation.—*British ship.*—A ship built in a foreign port in India, in 1817, within the limits of the company's charter, by foreigners, and which sailed under foreign flags until 1838, when it was then and thereafter owned by, and belonged to, British subjects, resident at Bombay, is entitled, under the proclamation of the Governor-General in Council, and the act of the Legislative Council of India, No. 2, of 1841, (passed and purporting of the powers granted by the statute 1 & 2 Vict. c. 56) to be registered at Bombay as a British ship, for the purposes of trade, within the limits of the company's charter. *Granger v. Spooner*, 6 Moore, 100.

TAXING MASTER.

See *Madras*.

VENDOR AND PURCHASER.

See *Contract of Sale*.

WILL.

Construction of word "estate."—The word "estate," when used in a will, is *genus generalissimum*, and will, of its own proper force, without any proof *alioquin* of an intention to aid the construction, carry realty, as well as personality, and is not to be confined and restrained to personality only, unless there is a clear intent expressed in other parts of the will,—to be gathered either from the whole will, or from the way in which the word is used in the particular part of the will where the contested use of it arises. *Mayor of Hamilton, Bermuda, v. Hodsdon*, 6 Moore, 76.

Construction.—*Court of Bermuda.*—Testator, by his will, devised to J. (his heir-at-law), part of his estate in fee, and also a life estate, in another portion of his estate, named P.; and also gave to F. (his wife), a life estate in part of P., during her widowhood, with remainder to his other son N., in tail, remainder to his (the testator's) daughters for life; and after giving certain specific chattels to F., the will proceeded as follows:—"I give all the remainder of my estate that is now in my possession, or may hereafter be mine, excepting what I have particularly given away unto my wife, F." And it is my will, that, whatever my estate may consist of, after debts and legacies are paid, that it be kept together under the direction of my wife, F. N. died without issue, and F., the widow, also died, unmarried and intestate. The heirs-at-law of J. sold the estate P. to the appellants, subject to the life estate of the daughters in tail, by the appellants against the daughters of the testator, the co-heiresses of F., for a partition. Held, by the Judicial Committee, affirming the decree of the Court in Bermuda, that the remainder in fee in the estate "P." passed to F., under the residuary clause, there being nothing in the context of the will to confine the natural and legal meaning of the word "estate" to personality only. *Mayor of Hamilton, Bermuda, v. Hodsdon*, 6 Moore, 77.

Observations upon the mistake in the report of Bannet v. Bannet, 8 Ves. 604. *Mayor of Hamilton, Bermuda, v. Hodsdon*, 6 Moore, 77.

3. Suspicious testamentary disposition.

Testator's knowledge and approval of contents.—Where a testamentary disposition is procured under circumstances of suspicion,—as where the party procuring it was the drawer, and was benefited by it, and it was executed at a time when the testator was of doubtful capacity; without any evidence of instructions previously given, or knowledge of its contents,—the party procuring it must prove that the testator knew and approved of the contents of the instrument. *Michell v. Thomas*, 6 Moore, 137.

Case cited in the judgment. *Berry v. Berry*, 6 Moore, 137.

See *Condon*.

LAZINO MASTER.

PROBATION DEPT.

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DIGEST, AND JOURNAL OF JURISPRUDENCE

SATURDAY, MAY 17, 1851

REGISTRATION OF ASSURANCES.

THE MEETING AT WAKEFIELD. — MR
JOHN BORN SHAW'S SPEECH.

The important meeting of Solicitors which was held at Wakefield on the 25th April, to consider the Registration of Assurance Bills, after referring to the Address to the Lord Officers of the West Riding of Yorkshire, requested Mr. John Hope Shaw, late Mayor of Leeds, who had moved the Address, to allow his Speech to be printed and published. It is a very able production, and comprises a full discussion of the general subject of registration, its advantages and disadvantages, an examination of the existing registers, as well, in Ireland, Scotland and the Colonies, as in foreign countries, and a candid admission, in favour of a local and limited registry, but with a recognition of the whole scope of the bill before the House of Lords, the several provisions of which are uniformly and carefully considered.

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of argument, we have much less than our confidential relations with all classes of society might at the first view be expected to give us. A little attention easily discovers the cause. Many of our professional duties are from their nature unpopular, and the most necessary ones are often the most unpopular. Against a body entrusted with such duties it must always be easy to excite a prejudice. Superficial men impute one unconsciously, and unfortunately too many who are, not superficial, and who ought to be above any prejudice but who have interests of their own to promote, or other purposes to serve, by depreciating our profession, conceding, so to speak, a prejudice which in their hearts they must despise. Our power consists in the knowledge of these reasons; our weapons are law only weapons; and those who with traditionary maxims do so defeat us by simply withdrawing from us those which we possess and regard as our weapons. And we so in returning to you?

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¹ See page 5, *ante*.

connected, indeed, would be the window which should communicate to those who agree with the opinion. There are, however, differences of opinion on many subjects of legislation; and such differences, whether found in London or in the country, and whether amongst barristers or solicitors, are entitled to respect."

Mr. Shaw then proceeds to the general question of registration. As a solicitor, in extreme practice in a registered county, he gives information which appears to be conclusive against registration altogether. It appears that the great bulk of conveyancing transactions are for small sums of money, as low even as 50*l.*, and the great majority not exceeding 100*l.* or 150*l.* It is manifest that these small properties cannot, and ought not to bear the additional expense of registration, to contribute to the chief evil, against which it is supposed a general register will provide. Mr. Shaw says, that if practitioners not in registered counties only, but throughout the kingdom, with almost no voice declare that the suppression of a deed is hardly ever heard of, and that with ordinary caution the success of such a fraud is next to impossible, then it is not an equal case. From the discussion of the general question of registration, Mr. Shaw proceeds to consider the foreign systems of registration, and after quoting the opinion of the Commissioners, "that the registers in other countries do not afford satisfactory examples for imitation here," he notices the essential difference between the Real Property Laws of other countries and our own.

The Laws of Succession to landed property in any country have an intimate connexion with the social and political condition. The extremes in different countries have been carried to opposite extremes, one extreme being adapted to an absolute aristocracy, the other to a leveling democracy. The aristocratic extreme is a system of inalienable entails, which seem to have anciently prevailed in France, and till recently, if not still, in Spain, and which prevailed to some extent in Scotland till they were modified by parliament in 1706. This plan necessarily ensured simplicity of title, and the absence of extreme charges, as effectually, by the direct opposite expedient of refusing to the owner all power of setting his property. Of the latter system the present laws of France, Belgium, and other countries where the code Napoleon prevails are examples. This is clearly stated in the law of Belgium in Mr. Sanders's account of the Registration of that country, subjoined to the Registration Report of 1860. He says: "Apparently nothing can be more simple than the law of Real Property in Belgium. No remainder, no usufruct, no limitations of estates are allowed, and the estate

itself is always alienable." Settlers bent in law, even with all their complicated machinery, seem to be unknown. Their laws, however, allow the creation of admitted rights under the name of usufruct; but this is quite distinct from the proprietary title, and is not registered. The only registered title is the proprietary one; and by a rule which the supporters of rigour will hardly propose to us: as an example for imitation, the unregistered usufructary may, in some cases, oust the registered proprietor, though he may have purchased without any knowledge of the usufruct."

Mr. Shaw then dwells with much force on the advantages resulting from our Laws of Property as compared with those of other countries, and proceeds to consider our home and colonial systems of registration, and again aptly cites the Commissioners' opinion, "that neither Ireland, Scotland, nor the Colonies, nor the English counties of York and Middlesex, afford any material aid towards the establishment of a satisfactory system of general registration in England." Mr. Shaw confirms this high authority by the following remarks:

"The colonies require but two observations, viz., first, that the colonial laws of real property are generally much more simple than ours; and, next, that their registries were almost coeval with the first grant of lands from the crown, and therefore commenced with the foundation of every title. These circumstances render the establishment of the system of registry in the colonies essentially different from its introduction into this country. Upon that of unhappy Ireland I need say little. We know that this real property in that country became involved in such hopeless entanglement as to require a special (and, but for its evident necessity, a highly objectionable) interposition of the legislature to cut the knots which could not be untied. That entanglement was at least not prevented, it may even have been in some degree occasioned, by the registry. Sir Edward Sugden said of it: 'I have had considerable experience with regard to the system of registration in that part of the United Kingdom, having had occasion to argue many appeals in the House of Lords; and I believe that much mischief results from the Registration Act in Ireland.' Mr. Christie says, that from his experience of it, his opinion is very unfavorable indeed," and adds, "I hope we shall never have an Irish register here. This registry, at least, is no example for imitation, but a warning what to avoid."

As to Scotland, Mr. Shaw adds—

"We must be careful not to confound with each other two departments in Scotland which are perfectly distinct. One of them is a depositary of original deeds; or, as the Lord Advocate terms it, 'A Register for the preservation of the documents.' This registration of deposits, as it is called, is not compulsory. It is optional

the land, &c., &c., &c. (1) The party to take his writing, thereon (2) In the other (the register) (properly called) the registration is not by deposit, or even by transcribing a copy of the deed of conveyance, but by transcribing, &c., &c. (3) The deed of conveyance, technically called the warrant of the assize, is produced to the notary public as his authority to draw out the instrument of the assize; but is neither registered, nor even produced to the registrar. The instrument of assize does not contain a copy of the warrant of the assize; but only an abstract of it.

The bill in the state in which it was referred to the Select Committee of the House of Lords is then criticised, both in principle and detail, in a very searching and able manner. For the present, we can only refer to the prominent topics noticed in the speech. 1st. The circumstances attending the introduction of the bill;—the difference of opinion amongst the Commissioners;—the promise of a second report, which has not appeared;—the opportunity denied to the two dissentient Commissioners of stating their views. 2nd. The inconvenience of a single register office to be established in London for all England and Wales. 3rd. The danger of destruction of the deeds by riot or fire. 4th. The objection to centralization and the dangerous constitution of the registering body, appointed by and under the control of the executive government. 5th. The objection to the deposit of original deeds. 6th. The impracticability of effecting loans on deposit of deeds. 7th. The argument in favour of a short memorial of deeds instead of a deposit of the originals. 8th. The objections to the exposure of the affairs of the land owners, by the deposit of their entire deeds, and it is asked—

Against whom is secrecy desired? Not (as has been supposed) against members of the landowners' own family, the adult members of which indeed generally know their rights already; nor against intended purchasers or mortgagees, who would be entitled to search the register; but against those (I fear by no means small) numbers who wish to acquire the knowledge an open register would afford for purposes of dishonesty; against the money jobber, who wants to be sure how far he may wish safety to himself supply the means of profligacy to wretched pretensions to a thoughtless and against the unprincipled adventurer who would use the bill as a cloak for his own dishonesty by kidnapping a child and the expenditure of the money in the most dissipated manner; and against the wicked and dishonest class who wish to see what land

owners should select for annexance and extortion. It is in no sense a matter of public objection to an open register, in length, that it would assist such outrages upon family property, happiness, and honour.

Mr. Shaw also treats of *intestations, indexes, and expense*—topics of great importance, to which we must refer the reader recommending this able publication to the careful perusal of the public as well as the professional.

COUNTY COURTS BILL, NORTHERN EXTENSION BILL.

The Bill presented to the House of Lords by Lord Brougham, for the extension of the Jurisdiction of the Judges of the County Courts, stands for a second reading in the House of Commons on the 25th instant. The measure has been so materially modified and curtailed in its passage through that branch of the legislature in which it originated, that its progress in subsequent stages is regarded with comparatively little anxiety, and perhaps none are more indifferent to its future fate, than those by whom it was in the first instance suggested and promoted. The sections which authorized the increase of the salaries of the County Court Judges from 1,000l. to 1,500l. per annum, and the appointment of new County Court Judges, together with the section authorising the County Court clerks to receive fees on account of Equity business done by the Judges of those Courts, have all been omitted from the bill, and it has been formally announced that the intention of creating additional County Court Judges is, for the present, abandoned.

Without this explanation, it might be difficult, perhaps, to understand why the conduct of a bill sanctioned by the House of Lords, and which—if it should ever become law—must undoubtedly effect important alterations in the practice of the County Courts, should be entrusted in the lower House to a member unconnected with the government or the legal profession, and who, however conversant with the details of trade, can hardly be supposed to have any peculiar acquaintance with the system of procedure adopted in the County Courts.

We are informed that since the first reading of the bill, the Government have taken charge of the bill, and have made several further amendments, have been suggested by the Government.

Although the startling and objectionable provisions engrafted upon the bill have, for the most part been pruned away, enough remains to render it abundantly deserving of consideration, and to justify us in recalling the attention of our readers to the shape it at present assumes.

The bill before the House of Commons contains 17 clauses, of which 11 relate to the jurisdiction conferred upon the County Court Judges, and the Commissioners of the Court of Bankruptcy, as auxiliary to the Masters in Chancery in examining accounts, and conducting inquiries, directed by the Equity Judges in matters brought before them. Five of the remaining six clauses, are framed with the view of amending the existing practice of the County Courts, and the sixth, (which happens to be the last clause in the bill,) proposes to provide that the council of any city or borough in which a Court of local jurisdiction, other than the County Courts, is established, may petition the Queen in Council to deprive the local Court of jurisdiction in cases in which the County Court has cognizance.

In reference to the clauses regulating the discharge of the duties of Masters in Chancery by the County Court Judges, there is no reason to anticipate that they can be frequently or extensively brought into operation. The County Court Judges will only be called upon to act when the Equity Judge, who has cognizance of the cause, considers that accounts or inquiries may be "more effectually" taken by those functionaries; and, recollecting the numerous claims upon the attention of the County Court Judges, and the slender acquaintance the majority of these judges can be supposed to have with proceedings in Equity, it is not to be apprehended that they will be troubled with many references from the Judges of the Courts of Chancery. We must be allowed, however, again to express our disappointment, that more effectual provision is not made in this bill for the employment of the Commissioners of the Court of Bankruptcy as assistants to the Masters in Chancery, for which their habits and practice as Commissioners of Bankrupts peculiarly qualify them, and for the performance of which duties, they have abundant leisure.

The clauses for amending the County Court practice are the most important portion of the bill. Two of these clauses, relating to the expenses to be allowed for professional services in the County Courts,

have already been referred to, and are now subjoined. :—

"So much of the 13 & 14 Vict. c. 61, s. 6, as provides that the expense of employing a barrister or an attorney shall not be allowed on taxation of costs, unless by order of the judge, is hereby repealed; but the Judges of the County Courts shall from time to time determine in what cases such expenses shall be allowed on taxation, giving public notice of their determination to be affixed to the walls of the Court houses in which they sit," s. 12.

"The County Court Judges, empowered to make rules of practice by the 12th section of the 12 & 13 Vict. c. 101, shall from time to time be required by the Lord Chancellor to frame Tables of Fees to be paid to attorneys in the County Courts, and to be allowed as between attorney and client, and as between party and party, by the clerk of each such Court in taxing the bills, such tables to be subject to the same revision as in the said act is provided; but the judge of each such Court shall have power, on reviewing the clerk's taxation, to direct that a greater or a smaller sum shall be allowed, in the particular circumstances of the case, than is allowed by the table," s. 13.

As before remarked, if it be intended to substitute reasonable professional remuneration for the nominal fees prescribed by the act 9 & 10 Vict. c. 95, s. 91, the obvious and only safe course would be to begin by repealing so much of the 9 & 10 Vict. c. 95, s. 95, as it is intended to make inoperative. It is anything but certain that the Table of Fees to be framed by the County Court Judges, under the clause above cited, would be held to supersede an express legislative provision remaining unrepealed.

The change of venue, when a new trial is granted, as proposed by the following clause, seems not merely reasonable but indispensable, when the County Court Judge determines both the law and the facts. Why the application for a new trial—an application frequently proceeding on the ground that the judge has mistaken the law, or formed an erroneous judgment upon the facts,—should not be made to another judge, rather than to the individual judge whose decision is complained of, does not appear to be manifest; and why the judge from whose decision the appeal is made should in any case be at liberty to nominate the judge before whom the second trial is to be heard, is more than we can understand. Surely, the selection of the Court, under proper limitations, should be left to the party who desires a second trial.

When a new trial is granted in any case, it shall be had before the judge of a district adjoining to that in which the first trial was had,

if either party desires to the adjoining district to be named by the judge before whom the first trial was had, in case the parties do not agree touching the same; and in all cases under the 13 & 14 Vict. c. 61, the venue may be changed, on application to a Judge of the Superior Courts, on such terms as he shall think fit to impose, notice of such application having been given one week before the sitting of the Court where the trial was appointed to be had," s. 14.

By the following clauses, it will be perceived, that it is proposed to assimilate the County Court practice to the practice of the Superior Courts of Law, in some important particulars, and there can be little doubt that the change will operate beneficially. It is intended to enact that—

"The summons issued in every case shall state the precise sum demanded by the plaintiff, and the name and residence of the plaintiff and of the attorney (when the same shall be issued by an attorney), and also a notice that if the defendant intends to dispute the debt or the amount thereof he must give notice in writing, six days before the day named in the said summons for the hearing of the case, to the plaintiff or his attorney, at their place of abode or office, of his intention to dispute the said debt or the amount, and that if the defendant shall not give such notice he will not be allowed to dispute the debt or the amount thereof, but that judgment will be given for the plaintiff to recover against the defendant the amount of the debt stated in the summons, and that execution will issue to enforce the payment of such amount, unless within 10 days from the date of the service of the summons the defendant shall pay the debt and costs, or promise to pay the same, in such manner as the plaintiff and defendant may agree upon, and that if payment be not made according to such agreement, judgment will be entered for the plaintiff, and execution issue to enforce the payment of the said debt, or so much thereof as shall remain unpaid; but when the defendant shall not appear by himself or some one on his behalf, according to the exigencies of the summons, upon an affidavit of the plaintiff or some one on his behalf that the debt or sum named in the summons is justly due and owing, and upon an affidavit by the said plaintiff and his attorney (when an attorney shall be employed to issue the summons) that to the best of their knowledge, information, or belief no notice has been given by the defendant of his intention to dispute the debt or the amount thereof, and upon due proof to the satisfaction of the judge that the summons (stating the amount of the debt or demand) has been duly served upon the defendant, the plaintiff shall be entitled to judgment for such sum as the plaintiff or some one on his behalf shall make oath is justly due from the defendant to the plaintiff, not exceeding the amount mentioned in the said summons: Provided always, that it shall be lawful

for the judge, if he shall be satisfied that justice between the parties shall so require, to adjourn the said case, and to allow the defendant to defend the suit, in like manner as if such notice as herein mentioned had been duly given by the defendant;" s. 15. And

"That no case shall be set down for trial unless the summoning officer has certified that the defendant has been duly served with the summons."

Why a plaintiff in the County Courts should be put to the trouble and expense of coming prepared to prove an undisputed claim, precisely as if his demand was disputed, no one has yet undertaken to explain. The sections last cited will amend the practice in this respect, but it is suggested that they are not framed with a due regard to the existing practice of the County Courts, in reference to the period in which a trial may be had after service of the summons. In many districts the Court days only return monthly, and the periods for interlocutory proceedings between the service of the summons and the hearing of the plaint must be regulated with a due regard to that arrangement. In proceedings for the recovery of small debts,—the proper business of the County Courts,—it is as desirable that the judgment should be obtained speedily, as that it should be obtained at a moderate cost.

COPYHOLD ENFRANCHISEMENT

BILL No. 2

A new Bill has just been introduced by Mr. Mullins, "to Extend the Acts for the Commutation of Manorial Rights, and for the gradual Enfranchisement of Lands of Copyhold and Customary Tenure,"—of which the following is an analysis:—

1. Reciting: 4 & 5 Vict. c. 35; 6 & 7 Vict. c. 23; 7 & 8 Vict. c. 55. Upon application to Copyhold Commissioners by lord or tenants, Commissioners to ascertain value of heriots, reliefs, and lord's right to timber.
2. Order of the Commissioners to be entered on Court Rolls.
3. Lord to appoint valuer within 10 days after order of Commissioners.
4. Commissioners to call meeting for appointment of tenants' valuer.
5. Chair to be taken by Commissioner or Assistant Commissioner, and appointment of valuer to be in writing.
6. Commissioner may dispense with meeting in certain cases.
7. Appointment of valuers not to be revealed without mutual consent, except that Commissioners may remove for misconduct, &c.
8. In case of death, &c. of valuers, others to be appointed.

9. In case of neglect of lord, Commissioners may appoint lord's valuer.
10. In case of neglect of tenants, Commissioners may appoint tenants' valuer.
11. Appointment of umpire.
12. Commissioners to appoint umpire on neglect of the valuers.
13. If either valuer refuse to act, the other to proceed ex parte.
14. If valuers fail to proceed within days, same to go to the umpire.
15. On default of umpire, &c.
16. Valuers may call for books, &c.
17. Court Rolls, &c. where to be produced.
18. Power of entry for purposes of act.
19. Valuers how to proceed.
20. Questions at law may be referred to the Commissioners.
21. Valuers may include agreements and statements, by consent.
22. Schedule of valuations to be confirmed by the Commissioners.
23. Lord and tenant may agree that charge shall be specifically confined to certain lands.
24. Charge under act to be a first charge, but not to preclude trustees from investing.
25. Commissioners may correct errors, with consent.
26. For effecting enfranchisement after next admittance.
27. Mode of effecting enfranchisements.
28. Power for Commissioners to defer payment of consideration for extinguishing heriots, reliefs, and rights of timber or trees, in certain cases.
29. Notice to be given to lord after sale, &c.
30. For the extinguishment of free rents, &c.
31. Where Lord, &c. shall have only a partial interest.
32. Steward's compensation to include preparation of deed of enfranchisement. Title of lord of the manor to be approved by the Commissioners.
33. Identity of lands.
34. Where enfranchisement consideration shall not exceed £100.
35. Persons entitled on death may apply for postponement of payment.
36. As to compensation to lord for increase in value by prospective improvements.
37. As to the purchase by lord in certain cases.
38. Oath to be taken by Valuers.
39. As to recovery of interest in enfranchisement considerations.
40. As to expense of proceedings under this act.
41. As to cases of partial interest in manors to arise under this act.
42. Confirmation of award by Commissioners to be final.
43. Where two thirds of a manor have been enfranchised, lord may require the remaining estates to be enfranchised.
44. Acts not to extend to mines or minerals, &c., nor to copyhold for lives where tenants have not a right of renewal.
45. Copies registered at the office of Commissioners to be evidence.

46. Agreements, &c. to be exempt from stamp duty.
47. Construction of words.
48. This act to be deemed part of first-recited act.
49. Title of acts.
50. Not to impede enfranchisement irrespective of this act.

THE ANNUAL CERTIFICATE DUTY.

THE motion of Lord Robert Grosvenor for the Repeal of the Attorney's Certificate Duty stands for Thursday, the 28th instant; but it appears that its late position on the list and the state of the public business will prevent the hearing of the motion on that day. The noble mover will, we understand, attend the ballot and procure a better position on the list as early as practicable.

We cannot concur in the opinion which some entertain, that it is useless to attempt the repeal in the present Session. There are several circumstances, in the state of parties, favourable to the measure, which should not be neglected, and therefore, we think, the motion should be pressed forward. The members of the present parliament have been well indoctrinated on the justice of the claim, the debate would be short, and we trust conclusive; but it will be expedient that the question should not be brought on late in the evening. We believe that Lord R. Grosvenor will lose no opportunity of advancing the cause.

THE MASTER OF THE ROLLS.

ADDRESS OF THE BARRISTERS OF GRAY'S INN, 1854.

ON Friday, the 9th May, being the Grand day of Easter Term, the barristers of Gray's Inn presented a congratulatory address to Sir John Romilly, the Master of the Rolls. Mr. W. Rogers, of the Chancery Bar, the Senior Barrister, addressed his Honour as follows:—

Sir, I am deputed by my brother barristers of this society to present to you an address, which, I trust, we all must feel has been ably penned by a gentleman who on every occasion in which he can do it asserts the interest or conveys the pleasure of this society; and is never wanting in zeal or activity. Sir, it would not become me to forestall the observations of others; but I cannot deny myself the pleasure and honour of saying that I look proudly forward to this auspicious occasion as a pledge for the good of our ancient and honourable society, standing pre-eminent as it does for friendly intercourse which is carried, I believe, to a greater extent in this society than in any other.

barriers have assembled to hope that long, long may you be spared to enjoy a career of the highest honour and usefulness, and on the Bench and in the Senate long, long may you be spared to us, *et precium et dulce decus*.

Mr. Henry Griffith read the address:—

WILLIAM HENRY GRIFFITH, ESQ., M.P., MASTER OF THE ROLLS, ONE OF THE BENCHERS OF GRAY'S INN.

WE, the barristers of Gray's Inn, beg to offer you our most sincere congratulations upon your recent promotion to the high office of Master of the Rolls.

We hail with a double pleasure this auspicious opportunity of paying to you this tribute of respect, when we reflect upon the great name which you so worthily bear, a name which is known, not only in England, but throughout the world, as identified with the loftiest patriotism and the purest philanthropy.

We cannot but feel a peculiar satisfaction that we are members of the same Inn of Courts of which you are, and your illustrious father, was, so great an ornament, and to which fresh lustre has been added by the distinguished judicial rank you have attained. After having enjoyed the great distinction of filling successively the high offices of Solicitor and Attorney-General to her Majesty.

We also beg to express to you our great gratification that your appointment will not deprive us of the happiness of frequently meeting you in this our ancient hall, where on all occasions you have observed that urbanity towards its members which has won for you their deep admiration and regard.

In conclusion, we hope, that you may long be spared to administer your responsibilities, and we entreat you to accept our warmest wishes for your health and happiness.

The Master of the Rolls: "Gentlemen.—At any time and upon any occasion such an address as this would give me very high gratification, but the value is augmented to the greatest possible extent when I consider that it is presented to me by a body of gentlemen, of whom I have known some on the present occasion, when I recollect that we are all bound together by one common tie by being members of this society, and that it is presented to me in its ancient and venerable hall. Gentlemen, when I first entered this hall as a student of the 12 judges, who then presided in Westminster Hall, I had been elevated to the Bench, selected from among our peers, and they were wont to attend on such occasions as the present to testify their respect and esteem for the society in which they had received their education. Although since that time we have somewhat declined in these respects, yet this society has always maintained a high position as the depository of legal knowledge, of its members, young, probably, in no slight degree, to the peculiar attention paid to the study of the law of England. Gentlemen, it is to me a matter of the very deepest regret, that I cannot satisfy you that I have no

your opinion, still not successfully to walk in the steps of my father, and that by doing so I have added some lustre to his own laurel society. I anticipate many future occasions on which we may reap these opportunities of social intercourse; but while I do so I look forward, also, with confidence, with boys, and with pride, upon the response of many gentlemen who surround me, who are pursuing here the various walks and paths of our noble profession, and who will, doubtless, achieve distinction for themselves and add fresh lustre to the society. And I say, gentlemen, that, so far as depends on myself—I trust I hope that I may not too fondly look forward to such an event—whether I am living or dead of not, I may not be the last of my name to be enrolled among the members, and possess the interest and approbation of this society. And more, gentlemen, I beg to thank you most sincerely for the most beautiful manner for the kind and touching proof you have given me of your appreciation of my father's name and his.

THE CASE OF W. H. BARBER.

Our readers no doubt noticed the reports to the newspapers of the application made by Mr. Roebuck, to renew Mr. Barber's certificate as

practising as an attorney, which was currently reported in *The Times*, as a motion for a rule calling on the Incorporated Law Society and the Registrar of Attorneys, to show cause why such certificate should not be granted. In most of the other papers it was erroneously stated to be an application for a rule absolute in the first instance. The Court had previously stated, that upon the matters already laid before the Court, the judgment ought not to be disturbed. The Lord Chief Justice said, he entirely was carried in it, but if there was any other foundation for the motion the Court would hear it.

We do not at present enter upon the discussion of the alleged new matter which it is contended ought to alter the judgment of the Court. The main question now is, whether there is sufficient to justify the reopening of the case, after the long and careful investigation it has undergone, after 12 months' preparation, and a discussion of four days. If a rule nisi should be granted, it seems probable, from the course which Mr. Roebuck was permitted to take, that the whole of the circumstances connected with the several companies must be re-discussed, with reference to the effect of the new affidavits.

On the last day of Term (26th May) Lord Campbell said,—"In the application made on behalf of Mr. Barber, the Court will take far more time until the next Term, which is a great distinction, and is more to look at all the affidavits, and consider whether it is fit that a rule to show cause should be granted."

See page 10, where

is a full account of the case, and of the proceedings in the office of the Registrar of Attorneys.

TESTS WHO PASSED THE EXAMINATION:

1851.

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Township Article: Revised 4/20/11

Anstin, Joseph	Robert Morrell; John Marriott Davidson
Baker, Henry Goldsby, B.A.	John Gidley
Barret, Edward, jun.	Edward Barret, sen.
Barwis, Thomas Osnoth	Thomas Henry Street
Benkinsop, James	Castel William Clay; John Swift
Boorman, William	Henry Rivington Hill
Booth, George	Henry McGregor Clark; James Davidson
Boyce Matthias	Henry Seymour Westmacott; John Alexander

Bragg, George Augustus
Brown, Joseph

Brown, William Henry (med) + **William Brittan**
Brown, Henry (med) **Charles Murray**;
Camp, Stephen **Henry Seymour**; **John Murray**
Westmacott; **John Alexan**

Cattley, Bowden	born 1810 in W. I.	William Gray	born 1810 in W. I.
Church, Julien Roberts	born 1810 in W. I.	John Thomas Church	born 1810 in W. I.
Clark, John	born 1810 in W. I.	John Nichols	born 1810 in W. I.
Clayton, John Hughes	born 1810 in W. I.	John Clayton	born 1810 in W. I.
Clegg, George	born 1810 in W. I.	Kay Clegg	born 1810 in W. I.
Cole, Henry Edmund, jun.	born 1810 in W. I.	Cyril John Monkhouse	born 1810 in W. I.
Colquhoun, George	born 1810 in W. I.	James Colquhoun	born 1810 in W. I.
Cotton, Henry Montagu	born 1810 in W. I.	William Burridge	born 1810 in W. I.
Curtler, Maria	born 1810 in W. I.	John Brooke Hyde	born 1810 in W. I.
Curwood, Capel Augusta	born 1810 in W. I.	Sir George Stephen, bart.	born 1810 in W. I.

Davis, Sackville	John Vibration
De Gex, Edward Peter	Edmund Thomas
Dixon, Henry	Benjamin Auston
Drew, Edward	Joseph Young
Drewe, Clifford John	Thomas David Taylor
D'Urban, John	Alexander John Baylis
Eaton, Charles Edward	John Gregson
Elkington, William Henry	John Shaw Leigh
Finch, Arthur Elsey	Richard Henry Turlston
	John Finch, jun.; James Wells Taylor; Wm

Flamank, Robert Mayo
Fox, John Elliott, jun.
Francis, Felix
Galloway, John Spencer
Glencross, James Scobie
Green, Henry George
Hall, Charles Hurley
Harding, James Nett
Hicks, Alfred

[illegible]

Marson, Thomas Fish
Martineau, Thomas
Mayo, William Henry
Metcalfe, Walter Charles
Moore, James Albert
Moon, Francis
Moore, Henry
Morley, Thomas Gregory
Newman, Edmund
Nichols, Samuel
Nokes, Walter Frederick
Parfitt, John Henry

Thomas Frederick Mutton
Arthur H. Webb
James Tully Vining
Richard Ballou
William Perkins
William Rogers
Robert Williams Rosta
Walter Skidmore
John Wadsworth
The following
when going into
some business
call for some
it must often be put in

Robert Morrell; John Marriott Davidson
John Gidley
Edward Barret, sen.
Thomas Henry Street
Castel William Clay; John Swift
Henry Rivington Hill
Henry McGregor Clark; James Davidson
Henry Seymour Westmacott; John Alexander
Mainline Pinniger

Moses Wolland Harvey; William Nicholas Br
William Greatwood; Robert Greatwood; Ed
Albert Harrison

William Brittan
Charles Murray; John Murray
Henry Seymour Westmacott; John Alexan

William Gray
John Thomas Church
John Nichols
John Clayton
Ker Clegg

Ray Clegg
Cyril John Monkhouse
James Colquhoun
William Burridge

John Brooke Hyde
Sir George Stephen, bart.; Dalton Haskell, Bart.
John Woollaston

John Woolaston	1790
Edmund Thomas	1791
Benjamin Austen	1792
Joseph Young	1793

Joseph Young	.	March 11, 1897
Thomas David Taylor	.	April 1, 1896
Alexander John Baylis	.	March 11, 1896
John Gregson	.	

John Shaw Leigh
Richard Henry Turtleton
John Finch, jun.; James Wells Taylor: WIL

Blackburn, William Flammock, Charles James Abbott
John Elliott Fox

William Wallis Francis; William Holloway
John Hewitt Galloway
Joseph Elliott Squash

William Cobden Rhoades
John Sargent
Robert Jennings Crosse

Thomas H. Miller
Charles H. Miller
Edward Clark

John Hay, Gustav Franklin, Christopher G. John Houchen, Frederick Mayhew, Frederick Sanderson, Charles James Palmer.

Robert Brown
John Bramwell
John Smith

Thomas Roberts
Robert Tucker
David Gray, Charles Clarke, Joseph Woodcock

James Tully Vining

Joseph Parker, John Henry Rogers,
William Ostrom, Robert William Parks

John Howard; William Skillbeck;
George Edgewood; John Wadsworth;
Thomas Dean

John Jones, George Carey
as follows: "I am not a member of the
John Jones, George Carey
as follows: "I am not a member of the

Palgrave, Reginald Francis Devere
 Parry, Robert
 Payne, Alexander Richard
 Pearson, John Michael
 Peers, Joseph, jun.
 Phillips, John
 Pugh, Edward
 Ransom, Arthur
 Reddish, Edward, B.A.
 Rees, Daniel
 Rhodes, John Jackson
 Ridge, George
 Roberts, Henry
 Rogers, Henry
 Sanderson, Stephen
 Saunders, Henry, jun.
 Sherwood, Henry Austin
 Shindler, Robert
 Smales, Henry, jun.
 Smith, Thomas James
 Snow, Frederick Rogartus
 Stanforth, Samuel Herbert
 Teale, Thomas Greenwood
 Thompson, John Richard Wake
 Tibbits, Francis
 Tomlin, John
 Tremlett, George Gregory
 Truefitt, Francis
 Turner, Edward Goldwin
 Vincent, Edmund
 Walker, Theodore
 Ward, Reginald
 Whitfield, John
 Whitford, Henry
 Williams, John
 Woodcock, Frederick

Robert Riddell Bayley
 Thomas Bradwood
 John Ryne
 Charles John Shoubridge; William Sharpe
 Joseph Peers, sen.
 Thomas King Stephens; Jonathan Green
 John Lewis
 Robert Ransom
 Edward Reddish; John Spinks
 Henry Morgan; Thomas Evans
 Thomas Rhodes
 James Wilson
 William Roberts
 Edward Rogers
 George Marshall
 Henry Saunders
 Benjamin Wallington
 Thomas Wilkinson
 Thomas Henry Faber
 John Nickson Gaskell Thompson; John Atkinson
 George Vincent
 William Overton
 John Staniforth; Henry Vickers
 Edward John Teale
 Matthew Thompson
 Robert Tibbits
 Thomas Wheldon; John Dickson
 William Pringle
 William Cowburn; Daniel Smith
 Charles Selby Fallowdown; Alfred Klug
 Charles Norris Wilde
 Joseph Hockley
 Henry Gillett Gridley; Henry Walker
 Gregory Faux; James Crowley
 Evan Morris
 Thomas Whitford
 Richard Williams
 Edward Washbourn

SUGGESTED IMPROVEMENTS IN COMMON LAW.

SPECIAL JURIES.—DELAY.

To the Editor of the Legal Observer.

SIR,—It would seem that there is some room for reform in that branch of the Common Law which relates to the obtaining a rule for a special jury.—I allude more particularly to a case where notice of trial has been given in the usual way,—six days before which a defendant obtains a rule for a special jury which is served upon the plaintiff's attorney and the associate. The latter immediately marks the cause as a special jury cause, and in the event of the defendants not proceeding any further with his rule by nominating the jurors, &c., he has already succeeded (by simply obtaining a rule for such special jury) in preventing the plaintiff from trying his cause other than as a special jury cause.

By this means you will perceive a defendant could put off any trial of which notice had been given for the sittings in or as of the respective Easter or Michaelmas Terms until the sittings after the following Trinity or Hilary Terms respectively, when special juries only are tried. This seems to call for some amendment, as, no doubt, it must often be put in practice for

the purposes of delay, and, in many cases, must afterwards be the means of placing the verdict which the plaintiff obtains in jeopardy. If a debtor were called upon on obtaining such a rule to deposit the amount of the sheriff's and masters fees for nomination before such rule could be served upon the plaintiff's attorney, no doubt it would stop many applications of such a nature, which are made only for delay, and a *bond fide* defendant would not suffer by paying somewhat beforehand what he would most certainly be obliged to pay before or at the trial. If the cause were settled without answer or without the special distringas being taken, the amount of the fees could be returned either by an order of a judge or by consent of the plaintiff.

BARRISTERS CALLED.

Easter Term.

LINCOLN'S INN.

William David Cathcart Moulton, Esq.
 Clarke Watkins-Burton, Esq.
 John Heyward Jenkins, Esq.
 John Caldetott, Esq.
 Charles Balfett Russell, Esq.
 May Jacobs
 Henry Richard Parry, Esq.

John George Mayo, Esq. 2 & 11 Reg. St. 1885.
 Thomas Percival Beckwith, Esq. 10, 11 & 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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NOTES OF THE WEEK.

The Examiners appointed for the Examination of persons applying to be admitted Attorneys, have fixed Friday, the 6th June, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the Examination.

The articles of clerkship and assignments, if any, with answers to the questions as to

RECENT DECISIONS IN THE SUPERIOR COURTS.

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and the Commissioner being satisfied of the reasonableness of his omitting to give such notice, appointed a fresh day for the consideration of the certificate. The Vice-Chancellor having refused an application to rescind this order, the bankrupt appealed.

J. Russell and Wiles, in support, referred to 12 & 13 Vict. c. 106, s. 198, which provides, "that forthwith after the bankrupt shall have passed his last examination, the Court shall appoint a public sitting for the allowance of his certificate (whereof and of the purport whereof 21 days' notice shall be given in the *London Gazette* and to the solicitor of the assignees,) and at such sitting the assignees or any of the creditors of such bankrupt who shall have given to the registrar of the Court three clear days' notice in writing of his intention to oppose, may be heard against the allowance of such certificate; and the Court, having regard to the conformity of the bankrupt to the law of bankruptcy; and to his conduct as a trader before, as well as after, his bankruptcy; and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate,—and either find the bankrupt entitled thereto, and allow the same,—or refuse or suspend the allowance thereof,—or annex such conditions thereto as the justice of the case may require." And contended that the Commissioner had exceeded his authority by naming a second day at the end of 21 days.

The *Lord Chancellor* said, that there was nothing in the act to prevent the Commissioner from naming another day at his discretion, it being obvious the legislature intended to vest a certain discretion in him, and as it was not contended that such discretion had been improperly exercised in the present instance, the petition must be discharged with costs.

In re Gray. May 10, 1851.

LUNATIC. — CREDITOR'S CLAIM FOR INTEREST ON MONIES EXPENDED FOR IMPROVEMENT OF ESTATE. — EQUITABLE DEBT.

A petition for interest on debts incurred by the committee of a lunatic for the improvement of the estate, without the leave of the Court, was refused, the debt being allowed only as an equitable claim in consequence of the benefits resulting from such improvements; and held, that interest is only directed on debts where the contract carries interest on the face of it, or where notice be given of the creditor's intention to claim interest in the event of non-payment.

This was a petition for interest on certain debts which had been incurred by the committee, who had since become bankrupt, of this lunatic's estate for expenses in improvements, but which had been made without the leave of the Court. The claim had been established on the ground that the improvements had turned out advantageously to the estate. *Roberts*, in support, referred to *Bank v. Whaley*, c. 104; and 1 & 2 Will. c. 13, where the soundness of the length of time since the debt was incurred.

The *Lord Chancellor* (without calling on *Welford*, contra,) said, that the only two classes of creditors whose debts bore interest were either when the contract in respect of which the debt arose bore interest on the face of it, or where a demand had been made for payment with notice that interest would be required in the event of non-payment. In this case, however, the creditors had given credit to the committee, and although they had succeeded in establishing an equitable debt against the lunatic's estate, they had clearly no right to interest, and the petition would therefore be dismissed.

In re Davies. May 10, 1851.

TRUSTEES' ACT, 1850. — NEW TRUSTEES OF ESTATES IN IRELAND. — JURISDICTION.

Held, that the Court has not power, under the 13 & 14 Vict. c. 60, to appoint new trustees of estates in Ireland, but that application for such purpose must be made to made to the Courts in Ireland.

In this case *Martelli* applied, under the 13 & 14 Vict. c. 60, for the appointment of new trustees of certain estates which were situate in England and Ireland.

The *Lord Chancellor* said, that the act conferred no authority to appoint trustees of estates in Ireland, and that therefore the application, so far as it regarded the estates situate there must be made to the Courts in Ireland.

May 7, 13. — *In re Duce Sombre* — Order for fresh inquiry into lunatic's state of mind by two physicians appointed by the Court, with leave to consult the medical men employed on the former examination.

— 10, 12, 13. — *In re Sparrow* — Reference to the Master to take accounts, and costs reserved.

— 13. — *In re Uphill*, a lunatic — Order on petition for payment out of Court of certain moneys which had been paid into Court under the 10 & 11 Vict. c. 96, to which this lunatic was entitled to the guardians of a parish to which he was chargeable in respect of expenses incurred on his account.

— 13. — *Blakeney v. Dufaur* — Part heard.

Rolls Court.

Leah v. Smith. May 8, 1851.

BILL FOR SPECIFIC PERFORMANCE OF CONTRACT. — PLAID OF BANKRUPTCY.

A bill of bankruptcy was allowed, but without costs, to a bill filed in 1840, for the specific performance of an agreement to transfer to the plaintiff certain debentures in a railway stock company to 1844, a promissory note, but which had not been presented in consequence of the debentures

was *debt of little value, until lately, when their value had increased, and the bankruptcy having taken place in 1846.*

THIS bill was filed in 1840, for the specific performance of an agreement entered into by the defendant to transfer to the plaintiff certain debentures in the Swansea Waterworks Company as security for a promissory note for 500*l.* which he had given to the plaintiff to get discounted, and which had been dishonoured. It appeared that the suit had not been prosecuted in consequence of the debentures being nearly valueless, and it was now proceeded with on the value of the debentures being considerably increased. To this bill, the defendant, who had become a bankrupt in 1846, filed a plea in bar of such bankruptcy, and the case now came on upon demurrer to the plea.

R. Palmer and Hall, for the plaintiff, in support of the demurrer, on the ground that the bankruptcy, being subsequent to the institution of the suit, the plea was no defence; *Martindale contra.*

The Master of the Rolls overruled the demurrer, but without costs, as the authorities on the point were not altogether consistent.

May 7.—*In re Hall's Charity*—Judgment on petition for declaration under 52 Geo. 3.

9.—*Matthews v. Bagshaw*—Exceptions to Master's report disallowed with costs.

10.—*Fisher v. Hepburn*—Judgment on construction of will.

11.—*Newry, Warrepoint, and Rosetree Railway Company v. Moss and others*—Bill dismissed with costs.

12.—*Tristram v. Handy*—Bill dismissed with costs.

13.—*Palmer v. Great Northern Railway Company*—Injunction refused with costs.

Vice-Chancellor Knight Bruce.

Reagan v. Nehemiah. April 25, 1851.

WILL.—SATISFACTION OF DEBT BY LEGACY.

Held, that the presumption is in favour of a legacy being in satisfaction of a debt due from the testator, and such presumption will prevail, unless it be displaced by something contained in the will; and a bequest of 6,000*l.* new 3*1*/₂ per cent. consols was therefore held to be in satisfaction of a debt due to the estate in respect of a transfer of 2,000*l.* of the same stock.

The testator, in this cause, was indebted to a trust estate, under a settlement of which he was one of the trustees, in respect of a transfer of 2,000*l.* new 3*1*/₂ per cent. consols, and it appeared that he had bequeathed a sum of 6,000*l.* in the same stock to the trustees.

J. Parker and Hetherington for the plaintiffs, Bacon and Leach, for certain of the defendants, contended the debt was not satisfied by the legacy; but that the legacy was in addition to the debt.

Shannon and T. Stevens for the executors.

Goble, Rees, and Rogers, for other defendants, contra.

The Vice-Chancellor said, that as between the parties interested under the settlement and the will, there was nothing in the will to displace the presumption that the legacy was in satisfaction of the debt, it must be taken to be in satisfaction.

May 8.—*In re Outside Union Brewery Company, ex parte Croxton*—Action to be brought by Mr. Croxton for money paid to company's use against official manager.

8.—*Betts v. Betts*—Part heard.

9.—*India and London Life Assurance Company v. Dabry*—Demurrer to bill overruled.

10.—*Shardlow v. Gaze*—Order on anticipated claim, upon affidavit of plaintiff alone.

10.—*Ex parte Carter, in re Carter*—Adjudication in bankruptcy annulled with costs.

10.—*Attorney-General v. Lord Curzon*—Reference to the Master for appointment of new trustees.

12.—*Hutchins v. Hutchins*—Part heard.

13.—*In re North London Junction Railway Company, ex parte James*—Motion on behalf of interim manager granted to discharge order of Master allowing state of facts and claim of Mr. William Bagehaw.

13.—*Carver v. W. W. W. W.*—Leave to serve writ of summons on a foreclosure claim on wife, who was in receipt of rents of mortgaged property, of defendant, who was in America, under the 4 & 5 W. 4, c. 82.

13.—*In re Royal Bank of Australia, ex parte Walker and others*—Motion refused, with costs, to discharge on vary order of the Master allowing solicitor of creditors whose claims had been filed to inspect and take copies at their expense of books and documents in official manager's hands.

Vice-Chancellor Lord Cranworth.

In re Bliss's Trustees. April 30, 1851.

WESTMINSTER IMPROVEMENT ACT.—PETITION FOR PAYMENT OF COMPENSATION INTO THE BANK.—JURISDICTION.

The Commissioners under the Westminster Improvement Act having purchased certain houses paid the compensation settled under an award into the Bank of England under the 8. Vict. c. 18, s. 76, the owners not having completed their title. Subsequently, the fund was paid out on the Commissioners' petition, and by the owners' consent paid into the Commercial Bank of London in the hands of two persons, one representing each party in the transaction, as directed by such award. On a petition being presented by the owners to have the money paid into the Bank of England, held, that the Court had no jurisdiction, and the petition was dismissed with costs.

There was a petition under the Westminster Improvement Act for the payment into the

Bank of England of a sum of £520^l. the amount of compensation under an award dated 14th October, 1848, to the owners of certain houses in Strutton Ground, and which had been paid into the Commercial Bank of London in the names of two persons, representing each party in the transaction. It appeared that, under the award, the money was to be paid into the Commercial Bank of London, but that the owners, not having completed their title the Commissioners, on April 24, 1849, paid it into the Bank of England under the 8 Vict. c. 19, s. 76. The fund had subsequently been paid out on the petition of the Commissioners and paid into the Commercial Bank in the terms of the award, with the consent of the owners.

Rehull and Craig in support; *J. Parker and Russell* for the Commissioners, contra.

The Vice-Chancellor said, that as the Commissioners had paid the money into Court in consequence of the owners not having made out a good title, and the subsequent payment out of the fund was with their consent and on petition, the jurisdiction of the Court was at end, and the present petition would be dismissed with costs.

Blind School v. Gorea, May 8, 1851.

PRACTICE.—PAYMENT OF FUND OUT OF COURT.—PETITION.

Held, that the usual practice of the Court will not be departed from, nor an order be made on motion for payment out of Court of money, although the fund is small, (80^l); and the difference in the expense between proceeding by petition and motion was of great consequence, but the order will only be made upon petition.

THIS was a motion that a sum of 60^l. which had been paid into Court, in pursuance of the Master's report in this case, to the separate use of an infant who was entitled thereto on attain-
the age of 21.

Rasch, in support, submitted that the fund was small, and to obtain an order on petition would cost 13^l. 3s., while on motion only 7^l. 18s. 6d.; and that the difference in the expense was of consequence to the parties.

The Vice-Chancellor, after allowing the motion to stand over to inquire into the practice, said, that although similar orders had been made in one or two instances on motion, it was merely an *excepcionem*; and contrary to the usual practice, and the motion was accordingly refused, and the parties left to present their petition.

May, Attorney-General *v. Hardy*—Motion for injunction dismissed.

Sturges v. Walker—Order for appointment of solicitor of the Court as guardian of estates of lunatic defendants, under 82nd Order of May, 1846.

—10.—*Cartwright v. Bradwood*—Injunction refused to restrain defendant building gullery and mill upon undertaking not to interfere

with the stream, if the issue directed at law were adverse to him.

—9, 10, 12.—*Rees v. Rufford*—Stand over.

—12.—*Manlove v. Scott*—Injunction granted to restrain infringement of patent.

—13.—*Kemp v. Sobor*—Injunction granted to restrain defendant and Miss Wilmshurst from carrying on school contrary to covenant, but refused as to Mrs. Wilmshurst,—costs reserved.

Vice-Chancellor Turner.

Penny v. Penny, May 8, 1851.

ORDERS OF APRIL, 1850.—PROCEEDING BY CLAIM.—PARTIES.—BILL.—ACCOUNTS.

A claim was dismissed, but without costs, filed under the Orders of April, 1850, for the payment of a legacy against the surviving executor of a testator, where the personal representative of the deceased executor had not been made a party; and held, that the accounts to be taken, being not the common accounts, there being inquiries necessary as to the assets with which a farm, directed by the will to be carried on until the testator's youngest child attained 21 years of age, had been carried on, the testator having left an insufficient sum for the purpose, the proceeding should be by bill, and not by claim.

THIS was a claim filed under the Orders of April, 1850, to recover a legacy of a seventh share of a testator's personal estate against the surviving executor. It appeared that the testator had been dead about 20 years, and that part of the assets had been employed, under a direction in the will that his farm was to be carried on until his youngest child should attain 21, in carrying on such farm. It was alleged by the defendants, that the surplus fund applicable for the purpose of carrying on the farm at the testator's death was only 67^l.

Rolls and Westoby in support; *J. Baily*, contra, on the ground that the representatives of the deceased executor ought to be made parties, and that it was not a case to be prosecuted by claim, but by bill.

The Vice-Chancellor said, that the Orders of April, 1850, were not intended to alter the rule as to making those persons parties who were jointly liable under the 32nd Order of August, 1841, and that the objection for want of parties must therefore be allowed. And as the accounts to be directed were not the common accounts as the Court had to inquire what assets the farm had been carried on with, and to direct allowances to the parties whose assets had been employed, it

The 32nd Order directs, that in all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the Court, as parties, to a suit consenting such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

it would be impossible to direct, with any certainty, inquiries before the Master. The claim would therefore be dismissed, but as the parties might have been misled by the language of the orders as to the proper mode of proceeding, it would be dismissed without costs.

In re Mayhew. May 13, 1851.

TRUSTEE ACT, 1850.—PETITION FOR VESTING ORDER.—ADMINISTRATOR OF DECEASED MORTGAGEE.

A petition on behalf of the administrator of a deceased mortgagee dying seized in fee and intestate, praying vesting order under the 13 & 14 Vict. c. 60, was refused, although the next of kin of such mortgagee was unknown.

H. Stearns appeared in support of this petition, which was presented by the administrator of a deceased mortgagee, seeking a vesting order under the 13 & 14 Vict. c. 60. The mortgagee died seized in fee and intestate, and the next of kin of the mortgagee was unknown. The Vice-Chancellor held, that the administrator was not within the act, and refused the petition.

May 7.—*Collett v. Morrison*—Cur. ad. vult.

—8.—*Freeman v. Lomas*—Cur. ad. vult.]

—12.—*In re Dickson's Trust*—Judgment on construction of will.

—13.—*Heap v. Tongue*—Decree for execution of trust as prayed by bill.

—13.—*Stokes v. Salomons*—On special case; devise held to take estate under will and title to be therefore good.

—13.—*In re Rector of West Lynn*—Stand over for service of petition on parties interested.

Chancery's Bench.

Regina v. Hewitt and others. May 5, 1851.

INDICTMENT FOR CONSPIRACY UNDER 6 G. 4. c. 129, s. 3.—PROSECUTOR'S COSTS UNDER 5 Wm. & M. c. 11, s. 2.]

Certain persons, members of a provident society, were indicted for a conspiracy in violation of the 6 G. 4. c. 129, s. 3, to impose on one R., a member of the society, a fine for not abiding by certain of the rules, and to prevent him by threats from hiring himself out to work with G. T. and with others, and also to prevent G. T. and other persons from employing him. It appeared that Messrs. R. & M., who were coopers, had set up a steam-engine to do certain work which had been usually performed by hand, whereupon the defendants formed a resolution not to work at their yards, or with any person who did so, and having done there was fined 10*l*. and having afterwards gone to G. T., the defendants refused to work unless he was dismissed.

Messrs. R. and T., who prosecuted the indictment, were held to be parties grieved or injured within the 5 Wm. & M.

8. 11, s. 3, and a rule was made, nisi set aside a side-bar rule for the defendants to pay the costs of such indictment.

This was a motion for a rule, nisi to set aside a side-bar rule, to tax the costs of this indictment which was preferred against certain persons for a conspiracy, in violation of the 6 G. 4. c. 129, s. 3, to impose a fine of 10*l*. on one Charles Evans for not abiding by the rules of the Working Coopers' Society, of which he was a member, and to prevent him from hiring himself with a person named George Turner and others. The indictment had been removed into this Court by certiorari, and appeared at the trial before Lord Campbell, that Messrs. Rosenburg and Montgomery were coopers at Brompton, and had set up a steam-engine by which certain work usually done by hand was performed by steam, and that the defendants, who were workmen at their yards, moved not to work there or with any other person who did, and Evans having gone to work there was fined 10*l*. by the society, and on his subsequently going to Mr. Turner the defendants left their work until he was dismissed. The defendants were convicted, and a side-bar rule had been obtained to tax the costs, by Messrs. Rosenburg and Montgomery, who were the prosecutors.

Warren in support, on the ground that Messrs. Rosenburg and Montgomery were not parties "grieved or injured," so as to come within the statute 5 Wm. & M. c. 11, s. 3, and not therefore entitled to their costs, and that they did not appear on the record to be the prosecutors.

The Court, however, held, that the evidence at the trial showed them to be parties grieved by the conspiracy, citing *Regina v. Dobson*, 9 Q. B. 302, and refused the rule.

May 1.—*Regina v. London and North Western Railway Company*—On demurrer to return to mandamus, judgment for defendants.

—7.—*Regina v. Norfolk Railway Company*—Judgment for defendants on demurrer to return to mandamus.

—7.—*Regina v. Dale*—On demurrer, each *sa.* on recognizance to bail before justices of the peace, judgment for the Crown.

—7.—*Regina v. Pococks and others*—Rule absolute to quash information by *venue*.

—8.—*In re arbitration between Robert v. Kemp, and Birr v. Roberts*—Rule discharged to set aside award.

—8.—*Regina (ex parte Allen) v. Dulwich College*—Rule nisi for mandamus on defendants to admit applicant to office of warden.

—8.—*Lock v. Brockell*—Rule absolute for new trial on the ground of the verdict being against evidence.

—8.—*Biddulph v. Chamberlaine*—Rule discharged to enter verdict for defendant.

—9.—*In re Thompson*—Rule absolute for certiorari to bring up order of justices.

—9.—*Regina v. Redman*—Rule discharged for criminal information—on payment of costs by defendant.

May 9.—*Murray v. Robt.*—Leave to amend plea on payment of costs.

—9.—*Regina v. Ferraro and another.*—Rule discharged for certiorari to bring up order of justices, under 8 & 9 Vict. c. 18, s. 24.

—10.—*Regina (in re Walsworth v. Queen of Spain) v. Mayor, &c. of London.*—Cur. ad. vult.

—11.—*Regina (in re De Hider v. Queen of Portugal) v. Mayor, &c. of London.*—Cur. ad. vult.

—12.—*Regina v. Lancashire and Yorkshire Railway Company.*—Rule nisi for mandamus on defendants to make necessary and convenient openings to effect communication between the railway and a certain collateral branch on lands.

—13.—*Regina v. Justices of Newbury.*—Rule absolute without costs on justices, to hear and adjudicate on complaint for nonpayment of paving rate.

—14.—*Regina v. Williams.*—Rule discharged on payment of costs for criminal information against justice of the peace for misconduct in his office.

—15.—*Regina v. Langhorne.*—Rule discharged without costs, for mandamus on defendant to pay to overseers certain moneys for expenses of inmate's maintenance.

—16.—*Regina v. Blackwell.*—Rule absolute for quo warranto on town councilor of Newcastle-on-Tyne.

—17.—*Latham v. Spedding.*—Cur. ad. vult.

—18.—*Espartero v. H. Barber.*—Cur. ad. vult.

—19.—*Regina v. Ayre.*—Rule discharged with costs for criminal information against clerk to justices of Hull for misconduct.

—20.—*Moseley v. Hyde.*—Rule discharged for new trial on the ground of misdirection.

—21.—*Pugh and another v. Cartlar.*—On demurrer to plea judgment for plaintiffs.

—22.—*Holt v. Dow.*—On special demurrer to plea, judgment for defendant.

—23.—*Regina v. Eastern Counties Railway Company.*—Rule absolute for mandamus on defendants to issue warrant to sheriff to summon jury to assess compensation in respect of lands taken for railway.

—24.—*Regina v. Ambergate, Nottingham, Boston, and Eastern Junction Railway Company.*—Rule nisi for mandamus on defendants to complete railway.

Queen's Bench Practice Court.

May 7.—*Todd.*—Rule nisi to strike attorney off the roll.

—8.—*Todd and another v. Hill.*—Rule nisi for stay of proceedings and for repayment to defendant of 50s.

—9.—*Todd.*—Rule nisi on attorney to pay over moneys.

—10.—*Todd.*—Rule nisi for certiorari to remove indictment for perjury into this Court.

—11.—*Don v. Westbrock v. Doltson.*—Rule enlarged until Michaelmas Term for judgment against default defendant.

—12.—*Regina v. Charlton, &c. of St. Mary, Nottingham.*—Rule nisi for mandamus

on defendants to proceed to elect churchwardens, &c. for the poor.

—13.—*Regina v. Scott.*—Rule discharged for criminal information for libel on payment of costs.

—14.—*Regina v. Chapman.*—Rule discharged for criminal information for libel, on payment of costs.

—15.—*Regina v. Patten and Gills.*—Rule absolute, with costs on Mr. Cutts to pay over moneys, with reference to the Master, as to the amount.

Common Pleas.

White v. Gardner and another. May 1, 1851.

ACTION IN TROVER TO RECOVER POSSESSION OF IRON.—BONA FIDE PURCHASE BY PLAINTIFF.—PASSING OF TITLE THROUGH FRAUDULENT VENDOR.

One P. purchased of the defendants, iron merchants, certain iron, giving bills and cheques in payment, and immediately afterwards sold it to the plaintiff, to whom the defendants were directed to send the same. Part of the iron was taken there accordingly, when the defendants discovered the bills and cheques were worthless, and retook possession of the iron and stopped the further delivery, whereupon the plaintiff brought an action in trover against them. Held, that as the plaintiff had given value for the iron, he was entitled, notwithstanding the conduct of P. in the transaction, to maintain the action.

This was a rule nisi, granted on April 16 last, on leave reserved to enter the verdict for the defendants in this action, which was in trover. It appeared that a person named Parker purchased a quantity of iron from the defendants, who were iron merchants, giving in payment certain bills and cheques, and directed it to be sent to the plaintiff's wharf. A portion of the iron was accordingly sent to the plaintiff's wharf, having been sold immediately to him by Parker, but the cheques and bills proving utterly worthless, the defendants retook possession of the iron and retained the remainder, whereupon this action was brought; and on the trial before L. C. J. Jervis at the last Nisi Prius Sittings in London, the plaintiff obtained a verdict for 75s. subject to this rule, the jury finding that Parker had not feloniously obtained possession of the iron, although he did not intend to pay for it.

Byles, S. L., and H. Hill showed cause on the ground the plaintiff had bought the iron bona fide from Parker and without any notice of the fraud; *Huntley, Q. C.*, and *Wiles* in support contended that as Parker had obtained the iron by fraud from the defendants, no such property vested in him as could pass the title to the plaintiff. They cited *Earl of Bristol v. Wilmore*, 1 B. & C. 514; *Lord v. Green*, 15 M. & W. 210.

The Court said, that as the plaintiff had given value for the iron, and it had been delivered to

him, the property therein passed by the sale, and he was entitled to maintain this action, and the rule must be discharged.

May 7.—*Rosetto v. Gurney and others*—Cur. ad. vult.

— 7.—*James v. Whitbread and others*—Cur. ad. vult.

— 8, 9.—*Stainback and another v. Fenning*—Cur. ad. vult.

— 9, 10.—*Doe dem. Richards v. Lewis*—Rule absolute for new trial on payment of costs.

— 10.—*Richards v. Lewis*—Rule absolute to enter a nonsuit.

— 10.—*Sharpe v. Inhabitants of Horbury*—Rule enlarged on undertaking to declare in prohibition.

— 10.—*In re Smith*—Motion granted to substitute name of John William Pyesmith for that of John William Smith, on the roll of attorneys.

— 10.—*Prow v. Squire*—Rule absolute to set aside final judgment with costs.

— 10.—*Deeson v. Roberts*—Rule nisi on attorney for defendant to pay 10*l.* 10*s.* to plaintiff with costs.

— 12.—*Hoare v. Ramsay*—Rule discharged for new trial on the ground of the improper rejection of evidence.

— 13.—*Dunkley v. Paris*—Rule enlarged to set aside writ of summons and subsequent proceedings, on the ground of writ being a forgery.

— 13.—*Ridgdale v. Latour*—Stand over.

— 13.—*Charlwood v. Elliott*—Rule absolute to set aside judgment, and for defendant to be at liberty to enter suggestion to deprive plaintiff of costs.

— 13.—*In re Henbury*—Stand over.

— 13.—*Colombine v. Penhall*—Rule discharged, with costs, to set aside rule on plaintiff to surrejoinder.

Court of Exchequer.

Bearcroft v. George. May 8, 1851.

COUNTY COURTS' ACT.—ACTION FOR LESS THAN 20*l.*—PAYMENT INTO COURT BY DEFENDANT.—NOLLE PROSEQUI.—COSTS.

A rule nisi under the 13 & 14 Vict. c. 61, was discharged with costs for the taxation of the plaintiff's costs in an action brought to recover the sum of 7*l.* 12*s.* 6*d.*, in which the defendants had paid 2*l.* 12*s.* 6*d.* into Court, denying his further liability, and the plaintiff had taken the money out of Court and entered a nolle prosequi, although the plaintiff lived 20 miles from the defendant.

THIS was a rule nisi under the 13 & 14 Vict. c. 61, granted on the 29th April last, for the Master to tax the plaintiff's costs in this action, which was brought to recover the sum of 7*l.* 12*s.* 6*d.* The defendant paid 2*l.* 12*s.* 6*d.* into Court, and pleaded us to the residue, and the plaintiff took out that sum and entered a nolle prosequi; the taxed costs of which amounted to 4*l.* 4*s.* 4*d.* which the defendant obtained under a *f. f.* The plaintiff

then applied to Mr. Baron Martin for his costs, on the ground the parties resided more than 20 miles distant from each other, and the application being refused, proceeded to tax the costs without an order, but the Master having declined to tax without a judge's order, the matter was brought before Mr. Justice Wightman, who, however, referred the plaintiff to the Court.

HONYMAN now showed cause against the rule, which was supported by M^r Namara, citing *Jones v. Power*, 16 Law T. 493, in which Mr. Baron Platt decided, that the plaintiff was entitled to costs where money was paid into Court and taken out.

The Court, however, discharged the rule with costs.

May 7.—*Attorney-General v. Bradbury and another*—Cur. ad. vult.

— 9.—*Brees v. Owens*—Rule discharged, without costs, to set aside order under 3 & 4 W. 4, c. 42.

— 9, 10.—*Great Western Railway Company v. Budd*—Cur. ad. vult.

— 12.—*Vauxhall Bridge Company v. Sawyer*—On special case, judgment for defendant.

— 12.—*Bland v. Crowley and others*—On demurrer to plea, judgment for plaintiff.

— 13.—*Duke of Buckingham v. Commissioners of Inland Revenue*—On appeal from decision of Commissioners under 13 & 14 Vict. c. 97, judgment for appellant.

— 13.—*Cobbett v. Grey*—Rule discharged, with costs, to set aside order to dispauper plaintiff.

— 13.—*Fry v. Whittle*—Rule discharged for leave to enter a suggestion to deprive plaintiff of costs under 9 & 10 Vict. c. 95.

Court of Exchequer Chamber.

Regina v. Davis. April 25, 1851.

INDICTMENT FOR STEALING GOODS.—VARIANCE IN NAMES OF OWNER.—IDEM SONANS.

In an indictment, certain goods stolen were alleged to be the goods of Darius Christopher, but from the evidence it appeared they belonged to Trius Christopher: Held, on motion in arrest of judgment, a fatal variance, and the conviction was quashed, although the jury found at the trial, at the Devonshire Sessions, that the names were idem sonantia in the dialect of the county.

THIS was a motion in arrest of judgment on this indictment, which was for stealing goods, alleged to be the goods of Darius Christopher. It appeared, however, that they belonged to Trius Christopher, but the jury being of opinion, on the trial at the Devonshire Sessions, that the names, as pronounced in the dialect of that county, were idem sonantia, the prisoners had been convicted.

The Court held that the variance was fatal, as it was impossible for the Court to say that Darius and Trius were the same, and the conviction was accordingly quashed.

The Legal Observer,

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SATURDAY, MAY 24, 1851.  
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ARREST OF ABSCONDING DEBTORS' BILL.

A BILL has been introduced by Lord Harrowby in the House of Lords, "to facilitate the more speedy Arrest of Absconding Debtors," which is deserving of attention. According to the present law, a creditor with the most certain information that his debtor is about to abscond, can only procure his arrest upon a writ of *capias* issued by the order of a judge in London; and it frequently happens that whilst the judge's order is being obtained, and before the fugitive debtor can be arrested under a writ of *capias*, he has escaped beyond the jurisdiction. The commercial and trading community of the North complain of the existing state of the law as a grievance, and the bill before us proposes to apply a practical remedy, it must be admitted, without introducing any alteration of the system of procedure beyond what is absolutely indispensable to effect the object in view.

Lord Harrowby's bill, after reciting that "the laws now in force for the arrest of debtors absconding from England are insufficient and inadequate for that purpose, by reason of the delay which is occasioned in obtaining the necessary process, and that frauds are perpetrated upon creditors residing at a distance from London by debtors embarking for distant countries from various towns and sea-ports in England," declares, "that it is expedient to provide a more expeditious and efficacious mode of obtaining process for the arrest of debtors about to quit England, in all cases where such debtors are now liable by law to be arrested."

The bill then proposes to provide that "whereas and after the passing of this act it shall be lawful for any Commissioner of the

Court of Bankruptcy acting for any district in the country, or Judge of any district County Court, on the application of any person who may have a cause of action against any person or persons about to quit England to the amount of 20*l.* or upwards, and whether the credit has expired in respect thereof or not, upon due proof by affidavit, or by solemn affirmation in cases in which solemn affirmation is allowed by law, to the satisfaction of such Commissioner or Judge, of such debt, and that there is probable cause for believing that such person or persons is or are about to quit England unless he or they be forthwith apprehended, to grant a warrant, such warrant being in the form and endorsed in the same manner specified in the Schedule A. to this act annexed, or to the like effect, to such person or persons as such Commissioner or Judge shall think fit, whereby such person or persons shall have authority at any time to arrest the person or persons named in such warrant, and him or them safely keep or lodge in the gaol of the county where he or they shall be arrested usually appropriated to the custody of debtors in execution, there to be kept until he or they shall have given bail or made deposit according to the practice observed in the Superior Courts of law at Westminster, and that such warrant shall bear date the day of the issuing thereof, and shall be in force for one calendar month from the date thereof, and shall and may be executed in any part of England, and that a copy of such warrant or warrants shall at the time of the arrest be served upon the party arrested: Provided always, that every creditor who shall cause such warrant to issue shall forthwith cause a writ of *capias*, and also in cases where no action shall be pending a writ of *semons*, to be issued out of some one of the Superior Courts of law at Westminster, or, if he shall think fit, out of the Court of Common Pleas at Lancaster, in case the debtor or debtors shall reside or be in the county of Lancaster, or out of the Court of Pleas at Durham, in case the debtor or debtors shall reside or be in the county of Durham, against each debtor or debtors, which writs of *capias* and *semons* shall be tested as of the date of such warrant, and that upon such return all *subpoenas* and warrants shall issue according to the

practice now in use, notwithstanding that the defendant shall have been arrested by virtue of any warrant or warrants granted by such Commissioners or Judges, and such debtor shall be served with such writ of capias, or the same shall be left at his or their last known place, of abode, within seven days from the time when he, she, or they, shall be arrested; and thereupon such debtor shall be considered and deemed to have been arrested by virtue of the said writ of capias, and all proceedings shall be had upon such writ of capias as if the same had been issued prior to the issuing of such warrant; and the arrest made on such writ of capias, and according to the practice now observed in the Superior Courts of Law at Westminster, or in the Common Pleas at Lancaster, or Court of Pleas at Durham, in the cases therein before mentioned, of which I have mentioned, shall be taken to be the case.

This enactment, it will be observed, contemplates that the execution of the warrant to arrest may precede the issuing of the writ of capias; and that such warrant should be addressed, "Not like the writ of capias issued under the 1 & 2 Vict. c. 110, to the sheriff of the county in which the debtor is supposed to be, but to such person as the Commissioner or Judge shall think fit,—by which we apprehend it is meant some fit person, nominated by the creditor and acquainted with the debtor." It also differs from the writ of capias inasmuch as it authorises the arrest of the person named in the warrant, not in any particular county, but in any part of England; and at any time whilst the warrant shall be in force, which is explained to be for one calendar month from the date.

Undoubtedly, by these means great additional facilities are provided for detaining persons who are disposed to violate their pecuniary obligations, and defeat justice by quitting the kingdom without the knowledge of their creditors, and in cases of this kind, as the operation of the law to be effective, it is not improper we are not prepared to assert that such an additional protection to creditors is unreasonable and unjust. In this, as in most other cases where the law authorises proceedings of a coercive character, its operation is oppressive or just, according to the spirit and discretion with which it is administered. The power, now exclusively vested in the Judges of the Superior Courts of Law, to order the arrest of an alleged debtor, upon a secret and ex parte application, it is proposed by the bill to be extended to the country Commissioners of Bankruptcy and the Judges of the County Courts. Whether the functionaries last named are peculiarly well qualified for the performance of a duty so

delicate and important, in addition to the varied duties already thrown upon them, may be fairly questioned. Leaving this to the legislature to determine, we venture to suggest, that the increased facilities proposed to be conferred upon creditors residing in the provinces might be advantageously extended to "the millions" residing within what are called the Metropolitan Districts. There can be no good reason why the Judges of the Superior Courts and the London Commissioners of Bankruptcy should not be placed on the same footing in this matter, and have co-ordinate jurisdiction with the country Bankrupt Commissioners and County Court Judges. The application to a Judge of the Superior Courts, to order a defendant to be held to bail, under the 1 & 2 Vict. c. 110, s. 3, is in practice uniformly made to the Judge sitting at Chambers, and as the attendance of the Judges at Chambers, is regulated by the nature and number of the claims upon their attention elsewhere, it is necessarily limited, and occasionally, at particular seasons, suspended for several days. The London Commissioners of Bankruptcy, or some of them, on the contrary, are bound by the statute, (12 & 13 Vict. c. 106, s. 110,) to sit "for the dispatch of business daily throughout the year, Sunday, Christmas-day, Good Friday, Monday and Tuesday in Easter week, and days appointed for public fast or thanksgiving excepted." It is not difficult to conceive a case in which a London merchant, or tradesman, who has been suddenly informed that his debtor is about to sail by a vessel expected to call at Southampton or Falmouth, would be prejudiced by having to proceed by application to a Judge at Chambers under the existing law, rather than to a Commissioner of Bankruptcy sitting at Basinghall Street, and invested with the jurisdiction proposed to be conferred upon the country Commissioners and County Court Judges by this bill. The inhabitants of all parts of the kingdom are equally entitled to the benefits of the more expeditious and efficacious mode of obtaining process; and it is proposed to substitute for that now employed, and there do not appear to be any practical difficulties to prevent the application of the bill equally to all parts of the kingdom.

We have already noticed it as a conspicuous merit in the bill introduced by Lord Almonby, that its provisions are framed with a manifest knowledge of the existing practice, and a disposition to disturb it as little as may be. The warrant to be issued

by virtue of the act is merely to be auxiliary to the writ of capias, which is to issue merely upon the production of a certificate that a copy of the warrant and of the affidavit on which it has been granted is filed in the office of the Court. A copy of the capias is to be served, within seven days, on the party arrested, and all subsequent proceedings will be had under the writ of capias, and as if no warrant had issued. Persons arrested are, of course, entitled to be discharged forthwith, upon payment of the debt as endorsed upon the warrant, or upon entering into a bail bond with two sufficient sureties, (sect. 5); and at any time after arrest a judge of one of the Superior Courts at Westminster may call upon the detaining creditor by rule or order to show cause, why the person arrested should not be discharged from custody. The order of a judge in such case to be subject to the revision of the Court, upon the application of either party dissatisfied with the order, (sect. 7). The costs of the warrant and arrest are to be considered as costs in the cause, and for the protection of the parties arrested it is expressly provided:—

“That in case it shall appear to the satisfaction of a jury, in any action brought for false imprisonment under a warrant authorized to be issued by this act, that such imprisonment was malicious, or that there was no probable cause of action, then the warrant and the writ of capias issued thereon shall in either of such cases be no ground of justification to the person at whose suit the same shall have issued;”

Schedule A, annexed to the bill, gives the proposed form of warrant, which with the warning indorsed, indicates so clearly the course of procedure under the proposed enactments, that we are induced to subjoin it without abridgement:—

SCHEDULE A.
“The Absconding Debtors Arrest Bill, 1851.

“Whereas *A. B.* (the creditor) hath this day proved before me (a Justice of the Peace for the County of *London*) that *A. B.* (the debtor) is indebted to the said *A. B.* in the sum of £*100*, and that there is probable cause for believing that the said *C. D.* is about to quit England, unless he be forthwith apprehended: These are to desire and authorize you to whom this warrant is directed, that you take the said *C. D.* wheresoever he may be found, and that you deliver him to the custody of the Sheriff of the county in which he shall be taken. And I do hereby authorize such Sheriff to keep the said *C. D.* safely until he shall have given

him bail, or made deposit with him according to law in an action [or promise] or of debt or covenant, or of tort, or of trespass, or on the case, or on the count of action may be; at the suit of *A. B.* or until the said *C. D.* shall by other lawful means be discharged from his custody: I do further command you to whom this warrant is directed, that on execution hereof you are to deliver a copy hereof to the said *C. D.* And I hereby require the said *C. D.* to take notice that a writ of capias will be issued out of the Court of [Queen’s Bench, or Common Pleas, or Exchequer, or Common Pleas at Lancaster, or Court of Pleas at Durham, as the case may be] and a copy of such writ will be served upon the said *C. D.* or left at his present or last known place of abode, within seven days after he shall have been arrested by virtue of this warrant. And I do further command you to whom this warrant is directed, that immediately after the execution hereof you do certify by indorsement hereon the time and place when and where you shall have executed the same. Dated the *10th* day of *July* 1851.

This warrant is to be executed within one calendar month from the date hereof, including the day of such date, and not afterwards.

The warrant is to be indorsed with the name and address of the attorney by whom it is issued, with the amount for which bail is ordered to be taken, and with the amount claimed by the plaintiff for debt and costs, upon payment of which within seven days from arrest, the defendant is informed he will be discharged from custody and all further proceedings stayed. The following warning is also indorsed:—

A Warning to the Defendant.

“Within seven days from the time you are arrested you will be served with a writ of capias, and thereafter you will be committed as arrested by virtue of such writ of capias, and all proceedings will be had upon the said writ of capias as if this warrant had not issued, or you may be discharged forthwith on depositing in the hands of the Sheriff of the county in which you are arrested the sum of £*100*, which sum shall be considered as paid under the writ of capias to be issued as aforesaid; and in case of your not being served with a copy of a writ of capias within seven days after you shall have been arrested you will be entitled to be discharged.”

This Bill stands in the list for Second Reading in the House of Lords, but the day has not yet been fixed.

SEQUESTRATION OF BENEFICES FOR DEBT

IN many cases where the powers of the 1 & 2 Vict. c. 106, s. 54, are put in force, and in cases of sequestration of benefices by creditors, no due provision is made for the maintenance and support of the curate. By a bill brought in by Mr. Frewen on the 14th instant, it is proposed to provide, that in cases of sequestration of benefices, the bishop of the diocese shall set aside a portion of the income of such benefice sufficient to provide for the needful support of the curate of souls, not exceeding one half of the clear annual value; s. 1.

And it is provided, that the certificate of the bishop shall be a complete authority for such payment against creditors; s. 2.

After thus providing for the cure of souls and for insurance, repairs, and other outgoings, the residue is to be applied as by law provided; s. 3.

REGISTRATION OF ASSURANCES

REPORT OF SELECT COMMITTEE.

ON the 20th instant, Lord Campbell reported the result of the deliberations of the Select Committee on the Registration of Deeds, and noticed the petitions which had been presented against the bill by the attorneys and solicitors, intimating a suspicion that the hope of being appointed Registrar or Deputy Registrar had something to do with the movement of the country attorneys.

This is a great mistake of the learned lord, for the principal opposition has come from Yorkshire, where it may be reasonably supposed that the present Registrars will be employed, (if the act should pass,) in order to save the compensation to which they would otherwise be entitled. But, besides this, it is manifest that the present, if not also the next, generation of solicitors would have their emoluments increased considerably, both by the searches in the registry and by the duplicates of the deeds to be enrolled. The solicitors might have anticipated that their motives would be misinterpreted, but they have evidently felt it to be their duty, for the sake of their clients, openly to state the objections to the project, suggested by their practical knowledge and experience. If, however, the landowners (to quote the words of the Wakefield meeting) are disposed to acquiesce in the measure, it will be the

duty of the solicitors, whether in town or country, "to endeavour to realize hereafter whatever portion of good may be extracted from the measure, and to mitigate, if they cannot avert, the evils it contains." Such sentiments ought to meet with a better return than the imputation of selfish motives.

Our information, a few weeks ago, in regard to the abandonment of the map system, appears to have been correct, for it seems that the Ordnance and Tithe Maps are not available for the present purpose, and therefore the bill will be amended without reference to maps, though the Commissioners were of opinion that the maps were essential to the plan.

KENT LAW SOCIETY.

WE briefly noticed the Remarks addressed to the Owners of Land by the Kent Law Society,¹ a fortnight ago; and proceed now to make some extracts from their publication. They state—

"It is admitted by the Commissioners acting under both the Commissions, by the Committee of the House of Commons in 1832, and indeed by all the advocates of a general registry of deeds, that unless the mode of registration, and the plan of the indexes be perfect, or as nearly so as is possible, and unless the facilities for searching such indexes be very great, and their freedom from error be secured, a register must be productive of more evil than good, and that a system which was wanting in any of these particulars would add to instead of taking from the defects in the Law of Real Property."

"The opponents of the bills while they were before Parliament in 1831, and the three following years, strongly urged the impracticability of the plan of registering and indexing then proposed, and it was suggested by them, that instead of trying an experiment of so novel and complicated a nature upon the whole kingdom, the failure of which would produce incalculable mischief, the existing registers in the counties of York and Middlesex, which were then, and are now, admitted to be very defective, or one of them, should first be put upon the proposed new system, and made, if it were practicable, to produce all the advantages that the advocates of a general register of deeds look for."

We adverted on the former occasion to the expense of registration, as pointed out by the Kent Law Society. The mischiefs which will arise from the establishment of a General Register, independently of expense, are thus described in the pamphlet:—

"Errors arising from the insufficiency or ambiguity of the register, or of the indexes, the particular nature of which cannot be pointed out, as these, as well as the searches, are to be subject to future regulations.

"The neglect of, or delay in registration arising from dilatoriness, or any worse cause, by which not only the parties who by themselves or their agents may hold the deeds, but third parties also may suffer, as many persons may be interested in the due registration of the same deeds, but all cannot have the custody of them for that purpose. When fines and recoveries were necessary, these documents and the deeds relating to them were, from carelessness and other causes, very often not completed by filing or enrolment, whereby many titles were jeopardized, new deeds and documents became necessary, and it was thought proper, in order to put an end to these difficulties, to insert clauses in the Act of Parliament abolishing fines and recoveries, to remedy the defects, thereby occasioned. Sir E. Sugden says, he believes he never saw a single title in a register county in which important deeds had not been omitted to be registered.

"Further mischiefs would arise from errors in registering or in indexing documents, either from any misapprehension of the nature of the indexes, or by reason of no statements accompanying the document to be registered, or from the inaccuracy or insufficiency of the statement in any particular, either of which causes would prevent the deed being duly registered, and would render the registration ineffectual.

"From any mistake in the maps as to boundaries, or otherwise, or in the index referring to such maps, there being no provision for making such maps perfect, or for the protection of adjoining proprietors.

"From any error in making searches, either in consequence of the party making such searches not being acquainted with the mode of indexing documents, or from insufficient or improper instructions having been given, or from want of care and attention in the party making them.

"Searches, too, are to be subject to such regulations and restrictions as are to be hereafter made, and such regulations and restrictions will very probably occasion further difficulties."

"The slightest mistake in any of these last-mentioned points, whether arising from the nature of the registry and of the indexing, over which the parties interested have no control, or from any of the other causes which may be occasioned by the want of skill, or of care in themselves, or in their agents, might be fatal to a purchaser or mortgagee.

"There would also be some risk of loss of deeds by transmission."

"The doctrine of notice being put an end to, frauds which might be incapable of proof as such, could be committed by parties who were ignorant that a deed had either not been registered at all, or if registered, not duly registered, and the consequences might be the loss of

the property by the real party entitled, thus, as is stated by Sir E. Sugden, the slightest inattention or accident may be more fatal to a purchaser, with the benefit of the Act of Parliament, than the vilest fraud without that protection."

The Kent Law Society also notice that the great bulk of transactions are of small amount, and particularly in their county where the custom of gavel-kind leads to a great subdivision of property. More than one-half of such transactions in Kent are estimated as under 300*l.*; and in several parts of the country, we are assured, that the consideration-money of the great majority of conveyances does not exceed 150*l.*, and many of them so small as 50*l.* or 100*l.*

NOTICES OF NEW BOOKS.

A Practical Compendium of the Recent Statutes, Cases, and Decisions affecting the Offices of Coroner. By WILLIAM BAKER, Esq., one of the Coroners for Middlesex. London: Butterworths. 1851. Pp. 702.

THERE are several valuable works on the Law of Coroners,—the oldest of which was that of Mr. Umfreville, Coroner for Middlesex. The modern ones are those of Sir John Jervis, published about 20 years ago, —followed by a Treatise by Richard Clarke Sewell, Esq., Barrister-at-Law, in 1843; and a Compendium by Joseph Baker Girdon, Esq., Coroner of Bristol, in 1850. The latter works contain valuable additions to the former, particularly on the subjects of medical jurisprudence, comprising infanticide, insanity, poisons, and the evidence of medical men. Mr. Baker's object has been, as he states, to interfere as little as possible with the labours of his predecessors, and indeed the present volume may be considered as a supplement to the others.

The author's great intelligence and sound judgment as a Solicitor well qualified him for the office of Coroner, to which he was appointed 20 years ago, and his lengthened experience in the discharge of his duties peculiarly fitted him for the composition of a practical work on the Law of Coroners. He has been engaged in the execution of his important office in one of the most busy districts of the metropolis, containing a dense, and, for the most part, a poor population, abounding in works of very considerable extent and magnitude, comprising almost every species of manufacture, with a frontage to the river Thames for a distance of six miles, the whole of the culdee-pool,

not in any case be unimportant. He has therefore been enabled to collate, from time to time, very valuable information on the duties of coroners; and the practical execution of his office has brought under his notice almost every species of death arising from felonious, accidental, and other causes.

The numerous alterations in the law, which have taken place within the last 20 years, particularly in reference to the poor, the police, the establishment of a General Board of Health, and the stringent orders and regulations adopted by that board, for the general health of the county, and prevention of loss of life, under the Nuisances Removal and Prevention of Disease Acts, added to the extensive introduction of gas, steam, and steam-boat navigation, and rail-road travelling, must have opened a vast field of additional duty to every coroner, in reference to the loss of human life, and the means suggested for preventing that loss. Mr. Baker, therefore, has rendered good service, both to the public and the profession in thus laying the result of his extensive practical experience before them.

The following is a general statement of the contents of the volume, arranged in alphabetical order.

Coroner, the Criminal Law as bearing on the office of.

Powers, jurisdiction, and inquisitions of.

The Criminal Law Commission, as affecting the office of.

Constables, the duties of, in relation to the office of coroner.

Assault, proveable under Act 7. W. 3. and 1. Vict. c. 85, cases, &c.

Burial Clubs and Friendly Societies, history and effects of, &c.; cases, &c.

Drunkenness, law and cases in reference to.

Destitution, Poor Law Commissioners' instructions relating to, &c.

Duelling, law and recent cases in reference to.

Drowning, Royal Humane Society's directions, &c.

Fire, Great and Poor Law, and cases relative to.

General Board of Health, establishment of, acts and proceedings.

Homoeopathic observations, as affecting coroners.

Infanticide, murder and drugging of infants, cases, &c.

Infants, pining, marasmus, atrophy, &c.

Insanity, civil subjection, recent cases and observations.

Insolence, justifiable, law and cases.

Manslaughter, observations, cases, &c.

Notorious offenders, Acts and recent cases and decisions.

Orders and Directions, in reference to coroners, &c.

Small Pox, law and cases in reference to.

Steam, vessels, railroads, &c., collisions and explosions of, cases, &c.

Witnesses' dying declarations, hearsay evidence, &c.

Assault, proveable under indictment, and inquisition for murder or manslaughter.

Ether and Chloroform.

The Appendix comprises the Acts relating to the Duties of Coroners; the Poor Law Commissioners' Orders and Directions; the Circulars and Orders of the General Board of Health; and numerous precedents of acquisitions, and forms of proceedings which must be peculiarly useful, not only to the Coroners themselves, but to Practitioners who are engaged in investigations before them. We heartily recommend the work to every one engaged in this branch of law and practice.

STUDIES FOR THE EXAMINATION.

MISCHIEF OF PUBLISHING ANSWERS TO THE QUESTIONS.

We have made inquiries, for the satisfaction of several of our correspondents, and understand it is the opinion of the Examiners and of the Solicitors General, that the publication of Answers to the Questions at the Examination (even supposing them to be correctly given) is highly injurious to the candidate and the young practitioner. There is no short and easy road to the real knowledge of the law. It must be acquired by personal and diligent study. Those who take the pains to search into the standard works and ascertain for themselves the true answers to the past questions, will recollect what they read, and whilst discovering the points for which they inquire, will learn many others which may serve them on the day of examination.

Those who to the indolent are also pernicious by unfitting those who rely upon them for an strenuous exertion of the higher faculties. They call into exercise a mere verbal memory, and leave the student untrained in habits of reflection and judgment. If he should succeed by the study thus afforded, he will probably be disinclined to pursue the study of his profession to any enlarged or comprehensive extent, and will depend upon such casual assistance as he can obtain when the wants of the occasion require it.

We advise, therefore, all who are de-

sirous of becoming good lawyers to pursue a regular course of reading and attendance at lectures, bestow a moderate portion of time in answering the past questions and testing their answers by a careful research into the proper works on the subject, which will of course be pointed out by the solicitors to whom they are articled.

EQUITY REFORM.

TRIAL OF WITNESSES IN EXAMINATION OF WITNESSES.

To the Editor of the Legal Observer.

Sir, In your number 1209 you say, under "Notes of the Week," page 29, on the subject of the proposed transfer of Equity jurisdiction, that "it is probable that County Court Judges, and, still more, the District Commissioners in Bankruptcy, would be useful in local inquiries, and, the examination of witnesses, and cross conducted by the professional agents of the parties, instead of secret examinations on written interrogatories."

I fully agree with you that, to this extent, in the efficacy of a more effective one, as a criterion in the procedure in Equity suits is exceedingly desirable; but, what insuperable difficulty can there be in the rendering the High Court of Chancery equally ambulatory with its Legal Sisters? Why should there not be an Equity as well as a Law Judge at every Assizes, and the proceedings in each department be assimilated as nearly as possible to each other? This would certainly necessitate the creation of three or more additional judges as co-administrators of Equity; but the necessary result would be immediate and tangible benefit to the suitors and the rescuing of individual from impending ruin, besides the extinction of millions worth of property from an infinitely extended system of cruel management.

I am aware that the appointment of extra judges in the manner proposed would necessarily entail a greatly increased expenditure for the administration of justice in the Equity department. But Mr. Editor, ought not the Corroborate of Law and Equity to be maintained at the national expense, inasmuch as the very constitution of Society itself depends on the theory or assumption that every individual has a right, founded on the social compact, to have his wrongs redressed?

If I am right in this view of the matter, it becomes the sacred duty of the State to provide for the necessary and effective administration of justice, both civilly and criminally, for all actions, or suits, under the former head, if it should be found by the jury that either party had been injured either by the invidious or malicious prosecution or defence of such action or suit, the costs (or damages) so incurred ought to be borne by the individual, so that the country would

not in this case be unjustly compelled to bear any part of the burden. I believe, that if the Court of Chancery were to direct the trial of all disputes depending thereon by juries at Common Law, and the rules of evidence as applicable to such trials, were applied to most of the particulars exigencies of such Courts, the rules of pleading at Common Law were amended, so as to do away with the ridiculous verbosity at present, not only tolerated, but rendered necessary. By existing Law and Equity suits, the Courts both of Law and Equity maintained in the national expense, and the business of bankruptcy transferred to the County Courts, jurisdiction of all of which tribunals, with a view to the efficient discharge both of bankruptcy and insolvency matters, should have the benefit of an additional judge. — Both of these fundamental and the entire expense of these local Courts to be provided for by the nation, as is done in the practice and in the delegated Equity jurisdiction (if this alteration be carried out) to assist the present judges only with reference to the latter branch; — the number of the jury in all cases, whether at Law or in Equity, by the County Courts being, as at present, 5 or 12, at the option of either party. I say that if these several alterations were carefully introduced, with an evident amelioration in the administration of both Law and Equity would be manifested, that we should very soon and the feelings of the public enlisted on the side of assistance as now, against all "good men and true" having the honour to belong to the legal profession.

Yr. Obedt. Servant, W. P. S. I have been very much surprised with Lord Denman's assertions with respect to the opinions and prejudices of some of his learned brethren, which, if they are correctly stated, reflect great discredit on them, and tend to show the indispensable necessity for infusing more of the spirit of progress in all our institutions.

DUTIES AND CHARACTER OF ATTORNEYS.

THE CONFIDENTIAL ADVISOR. We are glad of an opportunity to notice the opinions of writers, unconnected with the profession, on the character and merits of different branches of legal practitioners; and though we might, perhaps, successfully direct some of the points in the following summary, we are content to place it before our readers without comment. We think, indeed, that on the whole, the sketch of what may be termed "The Family Solicitor," is not unfairly drawn. About several thousand may be expected that some will be able to read the character of

their clients in applying the rules of law and justifiably or oppressively. Allowing for some exceptions, the moral influence and professional knowledge of "the confidential adviser," are acknowledged by the writer to be well and faithfully exercised.

"The position of those leading solicitors who have the affairs of great personages in their management is really very curious. They stand in the place which is, or rather which was, occupied by Father Confessors in Roman Catholic countries, and scarcely any important family step can be taken without their advice and assistance.

"With respect to property—it is in most, if not in all great families, the subject of formal arrangements by legal deeds or settlements expressed in language which no one thoroughly comprehends, and which men of the legal profession alone affect to understand. The persons chiefly interested in those arrangements know the general results of them, or what were intended to be the general results; but the instruments on which these results depend are not intelligible to them; and if they wish to make any new dispositions of their properties, they cannot stir a single step without the solicitor's guidance. And what, when people have property, almost every important act on their own part, or that of any of their family, is concerned either with getting or giving money, or money's worth, and the solicitor necessarily becomes a confidential agent in family arrangements. If a son has been extravagant, or a daughter is going to be married, the worthy head of the house knows not what to do till he has stated the case to his solicitor. And these are but the simplest matters in which his advice is required.

"Perhaps in no walk of life in England are there to be found men of such exquisite discretion as these professional advisers of great families. Their legal knowledge constitutes the least part of their value. They have the nicest appreciation of the prudent, the becoming, and the practicable; and their legal lore is in many cases only made use of in giving due form and validity to arrangements which are based on circumstances and considerations that at first sight seem to be wholly out of the province of the lawyer. Having become confidential advisers in questions where property is concerned, they are often called upon in respect to disagreements, doubts, suspicions, and other domestic troubles, where a calm, impartial judgment is required, and perfect secrecy may be depended upon.

"Some of the things that tell very strange histories of confidences no less strange, for your solicitor is the only man who is enabled by his professional conscience to identify himself with his principal, that he will make nothing known that is confided to him professionally, no matter what interests beyond those of his client may be concerned. If some man or woman is in a bad way, and on the whole having

committed some great offence, goes to confess to the parson of the parish, the reverend gentleman may probably deem it his bounden duty to call in the police, or to inform the injured party, as the case may be. Not so the solicitor. He advises, soothes, and lays down the doctrine of discretion, which he considers applicable to the circumstances. Solicitors are the priests of the *Numen Prudentia* and thereby many of them become very important and very rich. As regards morality, the same inconvenience or evil belongs to the system in which they are the prime movers, as does to the system of acting by trustees, or any other representation of the interests of an individual by persons who are not representatives of his conscience.

"I am far from saying that respectable solicitors take no account of what a man is in honour and conscience bound to do, as well as in law and in prudence. They generally consider what is becoming to a man in the station which he occupies and in the circumstances with which he has to deal. Following that rule, they cannot set aside the obligations of honour and conscience. But passions, and affections, and generous emotions are the natural auxiliaries of conscientiousness, especially when it is to be exercised among persons connected by blood or affinity; and these the solicitor keeps at a distance. He may give a cold opinion as to what might be considered generous; but his business is to advise what is prudent, and to keep his clients on their guard against emotion. And this is another reason why so much is committed to confidential solicitors for great or rich personages are glad of an escape from the disturbance of what they call 'a scene,' meaning thereby any occurrence in which the passions and feelings are strongly moved; and they take refuge from such agitation under the cold shade of professional advice.

"It is, moreover, but too true that while the eminent professional adviser will generally, if left to himself, either do, or recommend to be done, that which is reasonable and becoming under the circumstances, yet he is not an independent but that he will yield himself in some degree to be the instrument of his employer's anger, or enmity, or prejudice, if the employer be rich, and insist upon that course being taken. Whatever he does will, of course, be done in a respectable manner, and with due regard to professional rules; but many things which are harsh and domineering, and even unjust, may be done in this way, and the proud and unfeeling man of wealth will not find much difficulty in obtaining the most eminent aid to carry out his views, if the unwilling—as he generally is—that a decorous and solemn manner shall pervade the proceedings, however odious in their substance and cruel in their intention. Whether in such cases the professional adviser charges anything more in his bill for the pain his mind may have undergone in giving vigour to insensibility, or activity to malevolence, my readers here have not been able to discover. From Johnson's "England as it is."

Expert's Bench

Camp, Station 5, Prospect buildings, Highgate

Mr. P. L. H. R. Raymond - 1011 N. 1st St., St. Paul, Minn.

Superior Courts: Rolls.—V. C. Knight Bruce.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES

Master of the Rolls.

In re Hall's Charity. April 26, May 7, 1851.

CHARITY.—PETITION UNDER SIR S. ROMILLY'S ACT.—DECLARATION.—COSTS.

Under a deed of gift trustees were enjoined with certain messuages for the purpose of repairing the parish church, and for the purpose of repairing the bridge of U. and for other things needful in the parish of U. from time to time to be done at the discretion of the trustees and of others the parishioners of U., to be applied and distributed for ever. Upon a petition presented under the 52 G. 3, c. 101, by two justices of the county, the bridge being in a dilapidated state, a declaration was made that the fund was applicable in equal thirds amongst the three objects, and the costs of the petitioners and of the trustees were directed to be paid out of the fund in the trustees' hands as between solicitor and client, and if insufficient, the future rents to be impounded for the purposes.

This charity was founded in the reign of Queen Elizabeth by Edward Hall, under a deed of gift whereby he enjoined trustees with certain messuages, &c., in the parish of Upton-Severn and elsewhere, to the use and behoof of the reparation of the parish church, and the reparation of the bridge called Upton-bridge, and to the use and behoof of other things needful within the parish from time to time to be done at the discretion of the trustees and of others the parishioners of Upton, to be applied and distributed for ever. It appeared that the income amounted to about 900 s. a year, and that it had been applied by the trustees according to the trusts, but no application had been applied since the year 1839 to repair the bridge.

This petition was now presented under the 52 Geo. 3, c. 101, by two justices of the peace for the county of Worcester praying a declaration that the balance of moneys in the trustees' hands, and one moiety of the income of the charity estates might be paid to the petitioners for the reparation of the bridge, and so much of the other moiety as was not required for the repairs of the church to be accumulated for the purpose of defraying to the county the expense of repairing or rebuilding the bridge, and for a reference to the Master to settle a scheme as to the application of the income.

Roswell and Amphlett in support; Lloyd and Young, for the trustees, contra.

The Master of the Rolls said, that the trustees had no right or discretion vested in them to neglect the repair of the parish church or of the parish bridge, but were bound to apply a certain portion of the income to the

repair of the church, and another portion to the repair of the bridge. A declaration would therefore be made for the income to be applied, one-third for the repair of the church, another third to the repair of the bridge, and the remaining third to such purposes as the trustees in their discretion should think fit for parish purposes. The costs of all parties to come out of the funds in the trustees' hands as between solicitor and client, or if insufficient, the future rents to be impounded for the purpose.

Vice-Chancellor Knight Bruce.

Shardlow v. Gaze.—May 10, 1851.

CLAIM, UNOPPOSED.—ORDER ON PLAINTIFF'S AFFIDAVIT.

Held, that where a claim is unopposed, the affidavit by the plaintiff is sufficient evidence in support of the case for an order to be made; but where it is opposed by other affidavits, such affidavit is not evidence in favour of the plaintiff.

In this claim, which was filed under the Orders of April 1850, the evidence in support was the affidavit of the plaintiff, but the claim was unopposed.

Emsley for plaintiff; Amyot for defendant. The Vice-Chancellor said the order would be made as the plaintiff's affidavit was unopposed. Where, however, the plaintiff's evidence is opposed by other affidavits, it would not be considered evidence.

Guardians v. Williams.—May 15, 1851.

FORECLOSURE CLAIM.—WARRANT.—ASSISTED SERVICE ON WIFE OF DEFENDANT.

An order was made under the 4 & 5 W. 4, c. 82, s. 1, for service of a writ of summons in a foreclosure claim upon the defendant's wife, who was in receipt of the rents of the mortgaged property, the defendant being in America, following his trade as a slaughtering butcher.

This was an application for leave to serve a writ of summons in this suit, which was a claim for the foreclosure of a mortgage upon the defendant's wife, who was in the receipt of the rents of the mortgaged property. The defendant was, it appeared, in America, following his trade as a slaughtering butcher. **T. C. Wright**, in support, referred to the 4 & 5 W. 4, c. 82, s. 1, which enacts, that all the provisions contained in the 2 W. 4, c. 83, relating to suits instituted in the said

Courts respectively concerning lands, tenements, or hereditaments situate in England &c., shall be extended and applied to all suits instituted in the said Courts respectively concerning any charge, lien, judgment, or incumbrance thereon, and that it shall and

may be lawful for the said Courts respectively, on motion in open Court of any of the complainants in any such suit," &c., to order service of a subpoena to appear and answer, "in case where the said Courts respectively shall deem fit, upon the receiver, steward, or other person receiving or remitting the rents of the lands or premises."

The Vice-Chancellor made the order.

In re Royal Bank of Australia, ex parte Meux's Executors. April 16, 1851.

WINDING-UP ACT.—EXECUTOR.—CONTRIBUTORY.

The executor of M., a director in a banking company, having no personal knowledge of the nature or extent of his connection with the bank, applied, on his death in 1842, to the directors to know what was the extent of that connection, and were informed that he was the holder of 20 shares only of 50l. each, on which he had paid 10l. per share, and they acted on such information and sold the shares. It appeared that the directors subsequently cancelled 500 shares which M. held in the company. A reference to the Master having been made, on a petition for winding up presented in 1850, held, that from the lapse of time during which the transaction was allowed to stand, the executors were not liable as contributories in respect of the 500 shares, and the Master's decision inserting them on the list was reversed.

THIS was an appeal from the Master's decision including the appellants, as executors of the late Thomas Meux, in the list of contributories to this company in respect of 500 shares. It appeared that the appellants applied to the directors, after their testator's death in 1842, as to his liabilities in respect of his shares in the bank, of which he was a director, and were informed that he held 20 shares of 50l. each, on which he had paid a call of 10l. per share, and the executors afterwards sold these shares. The directors subsequently cancelled the 500 shares, which it appeared Mr. Meux also held, but the Master, being of opinion the directors had exceeded their powers in cancelling the shares, inserted the appellants' names on the list of contributories in respect thereof, whereupon this appeal was presented.

Bacon and Bush in support; Mallins and W. T. S. Daniel, for the official manager, contra.

The Vice-Chancellor said, that the executors, without any personal knowledge of the nature or extent of Mr. Meux's connection with the bank, had applied in 1842 to the directors as to the extent and nature of that connection, and having received the information that he was the holder of 20 shares only, acted on it and sold the shares. This occurred in 1842, and the executors had a right to consider their connection with the company as determined, and the petition for winding up being presented in 1850 without any objection having been

taken in the interval to the transaction on the ground of mistake or misrepresentation. The appeal must therefore be allowed, the costs to come out of the estate.

Vice-Chancellor Lord Stanworth.

Mayor, &c., of Preston v. East Lancashire Railway Company. April 25, 1851.

RAILWAY COMPANY.—INJUNCTION.—LOCAL ACT.—EMBANKMENT.

The East Lancashire Railway Company were empowered under their act, the 10 & 11 Vict. c. cclxxxix, to take 21 acres of a piece of land in the township of Preston called Wise's Garden, but had only taken 3 rods and 32 perches, and proceeded to form an embankment over the other part. An injunction was granted to restrain the company from forming such embankment, it not being in accordance with that shown in the plan.

THIS was a motion for an injunction to restrain the defendants from occupying, using, or interfering with certain pieces of land called Wise's Garden, in the township of Preston, and from putting or allowing to remain thereon the earth and soil which had been thrown thereon. It appeared that the defendants were empowered under their act, (10 & 11 Vict. c. cclxxxix,) to take 21 acres of the land in question, but had only taken 3 rods and 32 perches, and had proceeded to form an embankment on the other part.

Bothell and Kinglake, in support, referred to the 23 section of the company's act, which provides, that "the said company shall plant and keep planted in an ornamental manner, so far as the stability of the works will permit, the embankment shown upon the plan and section of the said railway on the north side of the river Ribbles, and shall use and apply all the spare soil, spoil, or rubbish, which may not be required for the works of the railway from the raising of the said embankment; and that the said mayor, aldermen, and burgesses shall have power to lay out convenient walks and promenades upon and along the said embankment; and on both sides thereof, to be used by the public, under and subject to the regulations from time to time of the said mayor, aldermen, and burgesses; but so as such walks or promenades be not carried in any part nearer the top edge of the embankment of the railway on either side than 10 yards of horizontal distance, and be so constructed as not to interfere with the safety, maintenance, or widening of the said embankment by the said company."

Roll and Bird, contra.

The Vice-Chancellor said, that as the company had not complied with the terms of their act, the injunction must be granted.

May 14. *Bayes v. Bell* an Injunction dissolved by consent.

Court of Queen's Bench.

In re Edmonton, ex parte Deane and Bradford Railway Company. May 9, 1861.

LANDS' CLAUSES' ACT. — COMPENSATION FOR INJURY TO LAND, WHERE UNDER 50L. WHEN CLAIM TO BE MADE TO JUSTICES.

Held, that where the amount of compensation claimed in respect of damage by a railway company under the powers of their act to lands is under 50l. under the 8 & 9 Vict. c. 18, s. 22, the application to the justices must be made under the 11 & 12 Vict. c. 43, s. 11, within six calendar months; and where such order was made after that time a rule was made, absolute to bring it up to be quashed.

THIS was a rule nisi for a certiorari on Mr. R. Greenwood and Mr. W. Busfield Ferrand, two magistrates of the West Riding of Yorkshire, to bring up their order dated 16th September last, directing the payment of the sum of 31l. 15s., the amount of compensation in respect of the injury done by the Leeds and Bradford Railway Company, to two closes of land belonging to James Thompson. The application had not been made within six months.

By s. 22 of the 8 & 9 Vict. c. 18, it is enacted, that "if no agreement be come to between the promoters of the undertaking and the owners of any portion by this act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed 50l., the same shall be settled by two justices."

And by the 11 & 12 Vict. c. 43, s. 11, it is provided, that "where no time is specially limited for making any complaint or laying any information, such complaint or information shall be laid or made within six calendar months from the time when the matter arose."

Addison, for Mr. Ferrand, now shewed cause; Ellis, for Mr. Greenwood, did not oppose; Hall and Oates, in support of the rule, was not called on.

The Court said, that as the cause of complaint had not arisen within six calendar months before the making of the order within the 11 & 12 Vict. c. 43, s. 11, the order was bad, and the rule must be made absolute.

May 16. *Watson v. Amburgate, Nuthingham, and Boston Railway Company*—On appeal, the decision of the Judge of the Grantham County Court affirmed with costs.

—14. *Woodhouse v. Cissam*—Judgment affirmed of Chubbity Court Judge.

—14. *Blowers v. Rackman*—Appeal dismissed under 13 & 14 Vict. c. 91, s. 14, where debt under 20l.

Queen's Bench, Practice Court.

(Coram Mr. Justice Coleridge.)

Cox v. Pritchard. April 30, 1861.

DISCHARGE OF DEFENDANT FROM CUSTODY. — ATTORNEY'S LIEU FOR COSTS. — ADMINISTRATION TO PLAINTIFF.

The Court discharged a rule on the plaintiff's attorney to discharge the defendant out of custody, which had been obtained on the ground that the plaintiff was dead, and that no will had been proved, or letters of administration granted, upon the affidavit of such attorney that in addition to his lien he had advanced 20l. on the judgment, and that he had received no intimation of such death, and that if he were dead, it was his intention to procure administration so be granted, and it appearing also that the plaintiff had left two children.

Last now shewed cause against a rule nisi on the plaintiff's attorney for the discharge of the defendant in this action out of custody. It appeared the action had been referred to arbitration, and a sum of 420l. awarded to the plaintiff, who signed judgment for the same on 3rd August, 1847. Proceedings by outlawry were taken thereon, and judgment of outlawry signed on June 1, 1848, upon which a *copias ut legimus* was issued, and a detainer lodged on 25th March last, upon the defendant's having come to England and been arrested by some other party. The rule had been granted on the ground of the plaintiff in the action being dead, and no will having been proved or letters of administration taken out, there was no one to consent to his discharge. The learned counsel opposed on the ground that the plaintiff's attorney had a lien on the judgment for his costs, and in addition for 20l. which he had advanced on the judgment, and also that he had received no intimation of the plaintiff's death, and intended, if he were dead, to procure letters of administration to be taken out, and the plaintiff having two children, whose interests should be regarded.

O'Malley and Ball in support.

The Court said, that as there was no proof of the plaintiff's decease, this application might be considered as made immediately after his death; and the attorney having expressed his intention to take out letters of administration, and it appearing that the plaintiff had left two children, whose interests should be protected, the administrator ought not to be deprived of a valuable judgment by the defendant's discharge, and the rule would be discharged, but without costs.

Court of Common Pleas.

Tyson v. Florence. April 25, 1861.

AUCTIONEER. AUTHORITY TO SELL. — REVOCATION. — DEMURRER.

The defendant employed, under a special commission, the plaintiff as auctioneer, to sell his goods on his premises, but having

to asked such authority, desired the plaintiff to quit the premises, and on his refusing, to do so expelled him. It appeared the plaintiff had allotted the goods held, on demurrer to the surrejoinder, in an action for such assault and expulsion, that the authority was revocable, and the action not maintainable.

This was an action brought by the plaintiff, an auctioneer, against the defendant, who had employed him to sell his goods, for assaulting him and expelling him from his premises, to which the defendant pleaded a justification, that the plaintiff was making a great noise and disturbance on the premises, and having refused on being requested to go away, he was expelled. Replication, that he was employed by defendant as an auctioneer to sell the defendant's goods, and necessarily made the noise and disturbance by reason of such employment, and that he had the defendant's authority to make the noise and disturbance in respect of his employment. Rejoinder, that defendant had revoked the authority he had so given to the plaintiff, who was not therefore justified in making the noise and disturbance, and that he lawfully expelled him from the premises, as he lawfully might. Surrejoinder, that before this said authority was revoked, he had allotted the goods, and incurred expense in so doing, and that defendant had no right to revoke his authority until he had paid him. Demurrer.

Watson and Manisty, in support; Lydell, contra, on the ground that as the license was coupled with an interest, the plaintiff had an irrevocable license to be on the premises, and that the agreement was not revocable without the consent of both.

The Court said, that as the agreement was parol, and the plaintiff had been employed for a special purpose to sell the defendant's goods on his premises, the authority was clearly revocable, and the demurrer must be allowed, and judgment for the defendant.

Court of Exchequer.

Duke of Buckingham v. Commissioners of Inland Revenue. May 6, 13, 1851.

STAMP ACT.—DEED OF TRUST.—"PURITY CHASER."—AD VALOREM DUTY.

Under a deed of trust, in which both parties joined, the Marquis of C. was enabled to purchase his father's (the Duke of B.'s) equity of redemption in all his mortgaged estates, and to raise the sum of 1,500,000l., to pay off the incumbrances on the estate, and the personal debts of the Duke of B., which was to be charged on the estate, whether settled on the son or not.

The Commissioners of Inland Revenue having decided, that such deed should bear an ad valorem stamp of 1,000l., under the 53 Geo. 3, c. 184, sched. part 1, title "conveyance," this Court, on a special case under the 13 Geo. 4, c. 97, s. 15, held, that the Commissioners were wrong, and allowed the appeal.

This was a special case, under 13 & 14 Vict. c. 97, s. 15, for the opinion of this Court, as to the amount of stamp duty payable under the 53 Geo. 3, c. 184, on a certain deed of trust, dated 27th May, 1847, and entered into between the Duke of Buckingham and the Marquis of Chandos, whereby it was agreed that the latter should purchase the equity of redemption and join in charging the estates, whether settled on him or otherwise, and the personality of his father with the payment of the sum of 1,500,000l., in order to pay off the incumbrances thereon, and for the payment of the duke's personal debts; and it was also agreed, that in consideration of the son's charging his reversion that he should have 1,000l. a year as a preference charge while unmarried, and 3,000l. a year if he should marry, together with a power to charge the estates with a further sum of 2,000l. for his children.

The Commissioners of Inland Revenue having held, that the deed was subject to an ad valorem duty on the 1,500,000l. of 1,000l., under the 53 Geo. 3, c. 184, sched. part 1, title "conveyance," this appeal was presented.

By that act it is provided, that "where any lands or other property shall be sold and conveyed, in consideration, wholly or in part, of any sum of money charged thereon by way of mortgage, wadset or otherwise, and then due and owing to the purchaser, or shall be sold and conveyed, subject to any mortgage, wadset, bond or other debt, or to any gross or entire sum of money, to be afterwards paid by the purchaser, such sum of money or debt shall be deemed to be the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the said ad valorem duty is to be paid."

Peacock, for the appellant, on the ground that the Marquis was only a trustee to arrange the affairs of the duke, and was not a purchaser in the sense of the act.

The Solicitor-General for the respondents.

The Court, after taking time to consider, held, that the Commissioners were wrong in their construction of the act, and allowed the appeal.

Court of Exchequer Chamber.

Regina v. Wexell and others. May 3, 1851.

INDICTMENT FOR DESTROYING GAME.—DESCRIPTION OF LANDS.

Held, that it is sufficient in an indictment under the 9 G. 4, c. 69, s. 9, for destroying game upon lands, to describe such lands as in the occupation of the person named, without specifically describing them therein; and that to support a conviction under such indictment it is not necessary that the prisoners should be in one and the same close, provided they be in one party.

THE prisoners in this case had been convicted under the 9 G. 4, c. 69, s. 9, for destroying game upon lands in the occupation of

the person named, but the fields were not specifically described in the indictment.

By s. 9 of the 9 G. 4. c. 69, it is enacted, that "if any persons to the number of 3 or more together, shall by night unlawfully enter or be in any land, whether open or enclosed, for the purpose of taking or destroying game or rabbits, any of such persons being armed with any gun, &c." each and every of such persons shall be guilty of a misdemeanor.

A question arose, whether the fields were sufficiently identified by being described as in the occupation of the person named, or whether the particular names of the closes should be given, and also whether it was necessary the parties should be in one and the same close to justify a conviction.

The Court said, the indictment sufficiently described the lands by stating they were in the occupation of the party or parties named, and that if the prisoners were together in a party on any part of the lands, the offence was committed, and the conviction was accordingly affirmed.

May 14.—*South Eastern Railway Company*

BUSINESS OF THE COURTS.

COMMON LAW CAUSE LISTS.

Queen's Bench.

Remaining undetermined at the end of Easter Term, 1854.
Swain v. Archibald
 Standing for the judgment of the Court.

Easter Term, 1848.

Doct. dem. of Warren and another v. Rydges Brydges, tent.—Sir F. Thesiger.
 (Stands for arrangement.)

Eastern Term, 1851.

Not.—Court and another v. The Ambergate, Nottingham Boston and Eastern Junction Railway Company.—Municipal.

Doct. d. Player and others v. Dustwood—Barr.

Chesley v. Ball—Bartholomew Kingdon.

Wills—Doct. d. Newman v. Rusham—Crowder.

York—Walton v. Midland Railway Company—Atherton.

York—Scholefield v. Andrew—Same.

York—Doct. d. Palmer v. Wye—Kilgus.

York—The Queen v. Scife and another—Dearnley.

Liverpool—Arlisford v. Wilde—Sert. Wilkins.

Gloucester—Baton v. The Swannsea Waterworks Company—Evans.

Evans v. David—Lott Ashburnham v. Michael—Allen.

Radnor—Bacon v. George, clk.—Davison.

Trinity Term, 1851.

Doncaster—Doncaster Baskelley and another v. Doncaster Baskelley and another.

Doncaster—Doncaster Baskelley and another v. Doncaster Baskelley and another.

Regina—On error from the Court of Queen's Bench.

May 15.—*Buchanan v. Kingston*—Part heard.

15.—*Bashleigh v. South Eastern Railway Company*—Stand over.

15.—*Stainer v. Head and others*—Cur. ad. vult.

16.—*Regina v. Ellis*—Stand over.

16.—*Wilson v. Birkhead, Cheshire and Lancashire Railway Company*—Judgment of the Court of Exchequer affirmed.

16.—*Clare v. Jones*—On bill of exceptions, judgment for plaintiff in error, and venire de novo.

19.—*Doct. dem. Parnock v. Whitcomb*—On bill of exceptions, judgment for the defendant and venire de novo.

19.—*Ambergate Railway Company v. Moryce*—Veni de novo.

16, 20.—*Frier v. Grey and others*—Appeal allowed.

17, 20.—*Boosey v. Jefferys*—Judgment for plaintiff and venire de novo.

20.—*Tunley v. Liverpool Dock Company*—Judgment for defendants.

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way Company v. The London and North Western Railway Company sued with, &c., dem.

Smith and Son.—Summs and others v. Marryatt, special case.

Orchard.—Orchard and others, executors, &c., v. Houchin, sen., dem.

Atkinson.—The Derbyshire, Stafford, and Worcester Junction Railway Company v. Tebbutt, dem.

Few & Co.—The Governor and Company of Chelsea Waterworks v. Bowley, special case.

Exchequer of Pleas.

PEREMPTORY PAPER.

For Trinity Term, 1851.

To be called on the 1st day of Term after the Motions, and to be proceeded with the next day (if necessary) before the Motions.

Jones v. Davies.

Re Roberts and Jones.

Edwards v. Cameron's Company.

Turner v. Same.

SPECIAL CASES.

For Trinity Term, 1851.

For Argument.

Micklethwait v. Winter.

Mebew v. Bone.

Clay and others v. Rufford and others.

Cannan and others, assignees, v. South Eastern Railway Company.

The Great Northern Railway Company v. The Manchester, Sheffield and Lincolnshire Railway Company.

Swansea Dock Company v. Leven.

Dickenson and another v. The Grand Junction Canal Company.

DEMURRERS.

For Trinity Term, 1851.

For Judgment.

Allhusen v. Proest.

Key v. Thimbleby.

For Argument.

Stocks and others v. Mayor, &c. of Halifax.

Kirk v. Unwin and another.

Callow v. Jenkinson.

Nichols and others v. Dixon.

Drew and others v. Collins.

Goddard v. Electric Telegraph Company.

Addyman v. Woodman and another.

Waterford, &c., Railway Company v. Maxwell.

Dechemant v. Laurent.

NEW TRIAL PAPER.

For Trinity Term, 1851.

For Judgment.

Lafone v. Ellis.

Hart v. Baxendale.

Longmeid and wife v. Holliday.

Beldon v. Campbell.

Leneghan v. Capone.

Great Western Railway Company v. Budd and others.

For Argument.

London.—Grapes v. Bunney.

London.—Same v. Same.

London.—Graham and others, assignees, v. Isomonger.

London.—Weare and another v. Barnett.

London.—Morgan v. Whitmore and others.

London.—Burmeister v. Norris.

London.—Graham and others, assignees, v. Mason.

Middlesex.—Smith v. Stevens and another.

Middlesex.—Same v. Howell.

Middlesex.—Jenkes v. White.

Middlesex.—Read v. Legard.

London.—White and another, assocs., v. Mallett.

Moved, Easter Term, 1851.

Middlesex.—Slocombe v. Lyall.

Middlesex.—Page v. Watkins.

Middlesex.—Hudson v. Roberts.

Middlesex.—Thoms v. Taylor.

London.—Stockton, &c. Railway Company v. Fox.

London.—Fenn and another v. Bittleston and others.

London.—Symons v. May.

London.—Trumpler v. Lookett.

London.—Graham and others, assignees, v. Newnham.

London.—Skipper v. Great Western Railway Co.

London.—Harvey v. Towers.

London.—Same v. Same.

Leicester.—Adcock v. Wood.

Lincolnshire.—Doe d. Guest v. Bennett.

Warwick.—Griffiths v. Tregellas.

Newcastle.—Healop v. Baker and others.

York.—Fernandes and another v. Parkin and others.

York.—Awde v. Dixon.

York.—Stocks and others v. Mayor, &c. of Halifax.

York.—Yates v. Eastwood and another.

Liverpool.—Cunliffe v. Harrison.

Liverpool.—Newton v. Vaucher.

Liverpool.—Law v. Rawson.

Liverpool.—Coe v. Platt and another.

Liverpool.—Doe d. Hellyer and others v. King.

Liverpool.—Yates v. Gardiner.

Kingston.—Foster, executor, &c., v. Dawber.

Kingston.—Same v. Same.

Kingston.—Naah v. Carman.

Kingston.—Griffin and another v. Humphery.

Norwich.—Abbott v. Bacon and another.

Stafford.—Duncalfe v. Biddle.

Stafford.—Genders v. Williamson and another.

Stafford.—Williams v. Marsden and others.

Hereford.—Lowe v. Carpenter.

Gloucester.—Turner v. Winterbotham and others.

Welchpool.—Davies v. Waring, jun.

Mald.—Williams v. Price.

Chester.—Roe v. Birkenhead, &c., Rail. Company.

Swansea.—Doe d. Dixie and others v. Davies.

Cardiff.—Doe d. Davies v. Thomas.

Bracon.—Price and another v. Woodcock.

Moved after the 4th day of Easter Term.

Middlesex.—Middlemass v. Hooker.

Middlesex.—White v. Till.

Middlesex.—Woods v. Finnis and another.

Queen's Bench.—Crown Paper.

FOR TRINITY TERM, 1851.

Middlesex.—The Queen (on the proc. of St. Parcas.) v. Overseers of the Poor of Leeds.

Yorkshire.—The Queen v. C. Carr.

Berkshire.—In the matter of an award between Great Western Railway Company v. Inhabitants of Tilehurst.

Lincolnshire.—The Queen (on the prosecution of Marquis of Bristol and others) v. The Tithe Commissioners.

Lancashire.—The Queen v. William Haslam and another.

Dorsetshire.—The Queen v. William Hellier.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, MAY 31, 1851.  
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THE LORD CHANCELLOR

AND THE

REGISTRATION OF ASSURANCES BILL.

THE consistent, manly, and statesman-like course adopted by Lord Truro, in reference to the Registration of Assurances Bill, cannot fail to be appreciated by the country. His lordship is friendly to the principle of a General Registration of Deeds, but he conceives, with every one who has written, spoken, or thought upon the subject, and who is favourable to the measure, that the efficacy of any plan of registration must depend mainly, if not altogether, upon the details and the adaptation of the machinery to be employed for the purposes required.

In common with one, and certainly not the least able, of the Commissioners to whom the consideration of the subject was delegated by the government, Lord Truro entertained great doubts whether the scheme suggested of providing maps for each district, and having land indexes referring to such maps, could be advantageously adopted. He found time, notwithstanding the multiplicity and weight of the public claims on his attention, to attend the meeting of the Select Committee to which Lord Campbell's Bill was referred by the House of Lords, and heard the arguments in support of the proposition stated and discussed ably and elaborately. The result was a confirmation of the doubts previously entertained as to the feasibility and expediency of the map plan. Lord Truro, along with the majority of the Select Committee, came to the conclusion that this portion of the bill ought to be rejected; but the exigencies of the public service did not allow of his attendance at subsequent meetings of the Select Committee, when we presume the

question must have been mooted and considered, whether the scheme of registration embodied in the bill referred to the Committee, could be carried out without the maps. In other words, whether the map clauses were not the foundation and essence of the whole scheme. It seems the Committee thought the bill might be amended and modified and a system of registration established under it without maps, and the bill altered in accordance with this resolution was subsequently reported to the House.

Now, the bill, as amended by the Select Committee, does not profess to deal with certain details the importance of which every one admits. Its warmest advocates concede that the measure will prove beneficial or injurious precisely in proportion to the efficiency of the provisions contained in it. Any system of registration, to be useful, must ensure *complete accuracy* and afford the *greatest facilities for reference* at the *least possible expense* of time and money. A scheme wanting in any of those requisites, and established by law, may—nay, must—entail incalculable evils on society, to be felt, not only by the present generation, but by many not yet born. The bill as altered and recommended by the Select Committee to the consideration of the House of Lords, does not contain provisions effectually securing the realisation of any one of the main objects essential to the success of a system of general registration. It is, in fact, but the outline or skeleton of a scheme to which it is proposed that the legislature should give the sanction of its authority, but which is to have vitality and substance added to it hereafter, we presume, without legislative intervention!

In the bill submitted to the House of Lords under these circumstances, the Lord Chancellor discerned several provisions

which to his acute and practised mind appeared to be manifestly objectionable, and having deliberately formed that opinion, he frankly and unhesitatingly stated it to the House. It was true, the bill was announced in the opening speech of the Session, as about to be introduced after much consideration by the government, and its conduct through the House of Lords was entrusted to Lord Campbell, who had recently been a member and is still a zealous and consistent supporter of the government. We presume, Lord Truro did not conceive that either or any of these circumstances would have justified him in concealing his objections to a measure which, by whomsoever it may be concocted, brought forward, or supported, does not necessarily involve any political consideration, and the consequences of which—be they good or evil—may ensue, when the distinctions of party are forgotten. It was evidently not consistent with his sense of duty to allow a bill of this nature to pass without pointing attention to its imperfections and defects, even though it had the general support of government and was introduced by a political ally, and for this the Lord Chancellor was assailed in the House of Lords with an acerbity not usually observable in the debates of that dignified assembly.

The reproach that justly attaches to so large a portion of our modern legislation is clearly traceable to the fact that the parliamentary success or failure of any measure which is proposed, depends not so much on the merits of the bill, as upon the character, position, and parliamentary relations of the member who becomes its parent. The inquiry is not so much how the bill will work, but by whom it is introduced. Lord Campbell seems to have been long enough in parliament to have had his mind impregnated with this unstatesmanlike and injurious prejudice. He seems to have thought that objections to the Registration Bill were only to be expected from the opposition side of the House, and that without reference to the conscientious convictions of the occupant, he might have expected support from the woolsack.

Fortunately, as we have no doubt it will turn out, for the public, and honourably for himself, the Lord Chancellor took a more enlarged view of his public duty, and he declined to "give up to party what was meant for mankind." By so doing the Lord Chancellor has increased his claims upon the gratitude and respect of the profession, and done all that in him lies to

maintain and elevate the deliberative character of that assembly over which he presides. If the example set by Lord Truro on this occasion should be generally followed by those Peers who are connected with the legal profession, we should be less likely again to witness the scandal of acts of parliament passed with the professed object of improving the law, which are declared to be unintelligible by those to whom its administration is entrusted, and are practically found to impede rather than facilitate the administration of justice.

The course pursued by Lord Truro, supported and approved, as we have no doubt it will be, by public opinion, induces us to hope that in future, bills for the alteration and improvement of the law may be regarded as a sort of neutral ground, where parliamentary opponents should meet with a determination to discard the influences of personal and party prejudices and predilections, and to apply their unfettered judgments to the consideration of the subject-matter of legislation, precisely in the same spirit as if the question was submitted for judicial decision.

The length to which these observations have extended only allow us to glance at a remark reported to have fallen from Lord Cranworth, in the course of the discussion in the House of Lords. His lordship is understood to have said, that if parliament waited until the details were agreed upon, no Bill for a General Registration would ever pass. It remains to be seen whether it is possible to suggest a plan the details of which should command general concurrence. If it be impossible, then, we venture humbly to think that the whole scheme ought to be abandoned. It is far better to have no registration, than a plan which is imperfect, defective, and dangerous.

We give the substance of the "amendments" in another article, but it is impossible for the landowners in the country really to know the effect of the whole bill as now altered within the short time remaining of the Session. It is manifestly unfair, as well as dangerous, to hurry on the measure in the present state of public business. There should be ample opportunity allowed to consider the reprint of the bill in the form now proposed.

AMENDED REGISTRATION OF ASSURANCES BILL.

The amendments made by the Select Committee of the House of Lords, are as follow :—

In the 6th clause the *Registrar* (instead of the Treasury) is to form districts with all convenient speed.

The 7th clause, providing that *Maps* and *Land Indexes* referring thereto be provided for each district, has been struck out.

Three months' notice is to be given of the commencement of registration, with the *Lord Chancellor's consent*, and the provision as to districts for which *Maps* and *Land Indexes* are provided is omitted; s. 8.

The following provisions are struck out of clause 9 :—

1. Where the grantor does not derive title under any registered assurance, the assurance is to be indexed under a new head.

2. Where the grantor does derive title under a registered assurance, the assurance is to be indexed under the same head as the assurance under which title is derived.

3. Power enabling an assurance required by regulations, to be indexed under an existing head to be indexed under a new head.

4. No assurance to be indexed under more than one head.

5. Particulars to be expressed on indexing an assurance.

6. The grantor of an equity of redemption is not to be considered as deriving his title under the mortgage deed.

Clauses 11 & 12 are also expunged, viz. :—

Entries to be made in "*Land Index*" containing references to entries in "*Index of Titles*."

Charges created before commencement of registration, providing for extension of time in relation to,

The following are substituted :—

An alphabetical index of the names of *grantors* to be kept for each district; s. 10.

Entries may be made of appointments of new trustees, &c., in *Index to Testators and Intestates*, instead of the *names of grantors*; s. 11.

The Court of Chancery may order the registration of an affidavit, if a *will* be cancelled; s. 32.

The following clauses are struck out, viz. :—

Any person may require an entry to be made under any head in *Index of Titles* referring to any assurance indexed under any other head; s. 47.

Supplemental maps and supplements to *Land*

Index, subject to the regulations, may be made and used by the registrar at his discretion; s. 53.

The following are new clauses :—

Maps and *Land Indexes* may be provided for any district to facilitate registration and searches. *Tithe* and *ordnance maps* may be copied, varied, and published, and used as a basis for *Land Index*, and the *Lord Chancellor* and *Master of Rolls* may approve of index with reference to maps; s. 65.

Registrar to report to *Lord Chancellor* and reports to be laid before parliament; s. 66.

Instruments required to be enrolled in local register may be registered under this act; s. 81.

LORD CAMPBELL AND THE COUNTRY SOLICITORS.

To the Editor of the Legal Observer.

SIR,—Jokes, like songs, are chartered liberties, to the truth of which a man is not bound to swear. But there are time and place for all things; and as no one could expect a *Lord Chief Justice of England* to favour the House of Peers with the "*Largo al factotum*," plain men are apt to be puzzled, when such dignitaries perpetrate jokes in such an assembly. Being one of the simple-minded, I confess I was for some time perplexed at the statements attributed by *The Times* to *Lord Campbell*, on presenting the Report of the Committee on the Registration of Assurances Bill to the House of Lords; and, for the benefit of those who may be labouring under like perplexities, I will, with your permission, explain how I got rid of mine.

I found *The Times* attributed this statement to the *Lord Chief Justice*:—"The Committee had also had various petitions from country solicitors calling for district registration, and it almost appeared that they were anxious to have as many district register offices as there were attorneys in England and Wales." This looked very like a joke; but I determined to bring it to the test of facts. Knowing that the Manchester Law Association had petitioned in favour of district offices, I counted the names of the Manchester attorneys in the Law List, to see how many register offices they were supposed to be "anxious" for in Manchester alone; and I found the number to be 214! My perplexity was at once considerably relieved. It was clear, either that *The Times* had misrepresented the *Lord Chief Justice*, or that his lordship had been "graciously pleased to be facetious." But as the difficulties of either hypothesis appeared nearly equal, the balance still hung suspended between the two.

The next passage was more perplexing. *The Times* represents his lordship to have said:—"He could not help suspecting, respectable as these gentlemen were, that the hope of being appointed registrar or deputy registrar had influenced their opinions on this question."

I determined to apply the test of facts again. I knew that the solicitors in the West Riding of Yorkshire (who, though they have presented no petition, have stated their sentiments in a public address) recommended the retention of the existing register office at Wakefield for the whole Riding. I am told that no solicitor has ever been the deputy registrar at Wakefield; and that, as the office is held during pleasure, and requires residence at Wakefield, no one established in business elsewhere would accept it. The chief registrar is elected by the freeholders of the riding of not less than 100*l.* per annum each; and the office has been held by a succession of country gentlemen, so elected, for a longer time than any one now living can remember. A West Riding solicitor's chance of obtaining it therefore depends on the concurrence of three events; viz.—1. His surviving the present registrar; 2. The 100*l.* freeholders at the next election preferring an attorney to a country gentleman; and 3. His being selected for that preference out of the 500 or 600 attorneys dispersed through the Riding. What is the value of this chance? For my part, I really cannot smell a job so far off,—perhaps some of the barristers-at-law and conveyancers of 10 years' standing, whom the bill favors with a monopoly of the London registrarships and deputy registrarships, may have a better scent, as they are nearer the game. The application of the test of facts therefore again brought me to the conclusion, that either the Lord Chief Justice had been jesting, or *The Times* had misrepresented him. And, as an imputation by the Lord Chief Justice of England on the motives of a body of men not allowed to defend themselves, even though conveyed in the form of a jest, appeared in the highest degree improbable, the inference that it was a misrepresentation of *The Times* became much stronger, and the balance inclined considerably on that side.

Then came a climax, and a decisive result. *The Times* attributes these words to the Lord Chief Justice:—"He had always been an advocate for a system of metropolitan registration, and was of opinion that their lordships ought to adopt it, or abandon the bill altogether." Now, undoubtedly, the Lord Chief Justice has always been an advocate for metropolitan registration, but I never heard of his having asserted (as *The Times* now represents) that the alternative was between Metropolitan Registration and none. On the contrary, I find in the second Report of the Real Property Commissioners, pages 27, 28, (the first signature to which is that of the Lord Chief Justice,) the following words:—"It appears to us that the reasons in favour of one general office for England and Wales greatly preponderate. We have therefore adapted the plan we propose to a metropolitan registration. We may remark, however, that it might easily be made applicable to district registers." There can be no jest here; and being quite unable to reconcile the two statements with each other, I came, by inevitable necessity, and

with unshaken faith, to the conclusion that the report in *The Times* was "a weak invention of the enemy." Thus happily ended all my perplexities.

I need not occupy your columns with remarks on the measure itself, which I am happy to see that you are discussing with your usual candour and ability.

A COUNTRY SOLICITOR.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

PROTECTION OF APPRENTICES AND SERVANTS.

14 VICT. c. 11.

THE following is an analysis of this act:—

Persons refusing or neglecting to supply necessary food to apprentices or servants, or unlawfully assaulting them, guilty of a misdemeanor; s. 1.

Costs of prosecution; s. 2.

A register to be kept of young persons hired or taken as servants from any workhouse. Not to supersede obligation to keep register as required by 42 G. 3, c. 46, and 7 & 8 Vict. c. 101; s. 3.

Young persons hired from workhouses or bound out as pauper apprentices to be visited periodically by officer of guardians or overseers; s. 4.

As to young persons hired or bound to masters residing at a distance from unions or parishes; s. 5.

Guardians and overseers authorized and required to prosecute in certain cases. Costs of prosecution; s. 6.

Justice empowered to bind over officer of guardians or an overseer to prosecute; s. 7.

The clauses of the act are as follow:—

AN Act for the better Protection of Persons under the Care and Control of others as Apprentices or Servants; and to enable the Guardians and Overseers of the Poor to institute and conduct Prosecutions in certain Cases. [20th May, 1851.]

Whereas it is expedient to make provision for the better protection of persons who are under the care and control of others as apprentices or servants: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

1. That where the master or mistress of any person shall be legally liable to provide for such person, as an apprentice or as a servant, necessary food, clothing, or lodging; and shall wilfully and without lawful excuse refuse or neglect to provide the same, or where the

master or mistress of any such person shall unlawfully and maliciously assault such person whereby the life of such person shall be endangered, or the health of such person shall have been or shall be likely to be permanently injured, such master or mistress shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years.

2. That the costs and expenses of the prosecution of any such misdemeanor as aforesaid may be allowed and ordered by the Court before which the indictment shall be tried, in like manner as the costs of the prosecution in certain cases of misdemeanor under the act of the 7 Geo. 4, c. 64, or may be allowed and ordered by the Court of Queen's Bench, in case the indictment shall have been removed into that Court, to be paid by the treasurer of the county or other officer who would have been liable to pay under the order of the Court in which, but for such removal, the indictment would have been tried.

3. That the guardians of every union and of every separate parish under the management of a board of guardians, and the overseers of every parish not in union or under the management of a board of guardians, shall provide and keep a book or books, and shall cause to be registered therein the name of every young person under the age of 16 who shall hereafter be hired or taken as a servant from the workhouse of such union or parish, together with the several other particulars specified in the schedule hereto annexed; and every such entry shall be signed by the presiding chairman of such board of guardians at an ordinary meeting thereof or by some one of such overseers; provided that nothing herein contained shall be taken to supersede or affect the obligation to keep such register of poor children apprenticed by overseers or guardians as is required by the statute of the 42 Geo. 3, c. 46, and the statute of the 8 Vict. c. 101.

4. That where any young person under the age of 16 shall have been or shall be hired or taken as a servant from the workhouse of any union or parish, or shall have been or shall be bound out as an apprentice by the guardians of any union, or the guardians or overseers of any parish, it shall be lawful for such guardians or overseers respectively, and they are hereby required, so long as such young person shall be under the age of 16, and shall be known to them to reside as servant or apprentice in the same service into which such young person shall have so gone as a servant from such workhouse or as such apprentice within such union or parish respectively, or within five miles of any part of such union or parish, to cause the relieving officer, or, where there is no relieving officer, then some other officer duly authorized for the purpose, to visit such young person at least twice in every year, and in respect to them in writing whether he has found reason to believe that such young per-

son is not supplied with necessary food, or is subjected to cruel or illegal treatment in any respect.

5. That where any young person under the age of 16 shall hereafter be hired or taken as a servant from the workhouse of any union or parish, or shall be bound out as an apprentice by the guardians of any union, or by the guardians or overseers of any parish, and the residence of the master or mistress shall be more than five miles from any part of such union or parish, then a written notice of such hiring, taking, or binding, specifying the name and age of the apprentice or servant, and the name, description, and residence of such master or mistress, shall be forthwith sent from such guardians or overseers to the guardians or overseers of the union or parish in which such master or mistress shall reside; and thereupon it shall become the duty of such last-mentioned guardians or overseers to cause the particulars contained in such notice to be registered in some book or books, to be provided by them for the purpose, together with the name of the union or parish from which such notice shall have been received; and such last-mentioned guardians or overseers shall cause such young person to be visited as frequently and in the same manner in all respects as if such young person had been hired or taken from their own workhouse, or had been bound out as an apprentice by themselves.

6. That where any complaint shall be made of an offence against this act, or of any bodily injury inflicted upon any poor person under the age of 16 years, for which the party committing it is liable to be indicted, and the circumstances of which offence amount in point of law to a felony or an attempt to commit a felony, or an assault with intent to commit a felony, and two justices of the peace before whom the examination is taken shall certify under their hands that they deem it necessary for the purposes of public justice that the prosecution should be conducted by the guardians of the union or of the parish, or where there are no guardians by the overseers of the parish, in which the offence shall have been committed, such guardians or overseers, as the case may be, shall, upon personal service of such certificate or a duplicate thereof upon the clerk of such guardians, or upon any one of such overseers, conduct the prosecution, and shall pay the costs reasonably and properly incurred by them therein (so far as the same shall not be allowed to them under any order of the Court trying the indictment, or of the Court of Queen's Bench,) out of the common fund of the union, or out of the funds in the hands of the guardians or overseers (as the case may be) of such parish.

7. That in the case of a union or parish under a board of guardians the clerk or some other officer of such union or parish, and in the case of a parish not under a board of guardians one of the overseers thereof, may, if such two justices of the peace before whom the examination is taken shall deem it necessary

for the purposes of public justice and shall certify as hereinbefore mentioned, be bound over to prosecute.

8. That the words "guardians," "union," "overseers," "justice of the peace," "officer," "poor," "parish," and "workhouse," used in this act, shall be construed in like manner as in the act of the 5th Will. 4, c. 76.

9. That this act shall extend only to England and Wales.

SCHEDULE.

FORM OF REGISTER.

Name of Child.	Date of hiring or taking as Servant.	Name of Master or Mistress.	Trade or other Description of Master or Mistress.	Residence of Master or Mistress.

NOTICES OF NEW BOOKS.

An Index to the Unrepealed Statutes connected with the Administration of the Law in England and Wales, commencing with the reign of King William the Fourth, and continued to the close of the Session, 1850. By THOMAS G. ARCHER, Solicitor. London: Butterworths. 1851. Pp. 103.

CONSIDERING the multitude of acts of parliament which have passed during the reigns of William the Fourth and her present Majesty, relating to the administration of justice, it is obvious that an index arranged according to the alphabetical order of the several subject-matters of the statutes will be very useful. A facility of reference to these various enactments has become, indeed, a great desideratum to all whose professional avocations or judicial functions impose upon them the necessity of a frequent examination of the statute book. Mr. Archer, therefore, has compiled the present publication. We have examined and tested several of the principal heads and find them perfectly correct.

In most cases, references have been made to every statute affecting each subject; but in others, where succeeding statutes refer to a great mass of different matters, and repeal clauses or parts of clauses in preceding statutes, the compiler has deemed it impracticable to adopt any other system than that of arranging generally the statutes in their proper chronological order.

Instead of indexing the statutes relating

to the inland revenue under that head, Mr. Archer has thought it better to comprise all statutes regarding exciseable articles under the head of "Excise," and all statutes relating to stamps, income tax, assessed taxes, &c., under the head of "Stamps and Taxes."

The work does not include the acts relating exclusively to Scotland, Ireland, or the Colonies, nor to the endowment of churches, the management of the public accounts, the militia, nor to such other public or local statutes as are not connected with the administration of the laws.

COUNTY COURT PRACTICE.

SOLICITORS' FEE.

To the Editor of the Legal Observer.

SIR,—There is a very absurd and arbitrary rule at present existing in the Westminster County Court, to the effect that no solicitor shall be allowed the fee given him by the act, unless he shall have, previously to the day of hearing, given the clerk of the Court notice that he intends to appear for the plaintiff.

I obtained a verdict for a plaintiff, and was denied my fee because I had not done this,—but I had not seen this rule, which is only affixed in the room where the plaintiff's and defendant's names are called previously to their going into Court, and where, from the peculiar construction of the Westminster County Court, they do not think of going until the day upon which their summons is to be heard.

I would only add, that this rule does not exist in any other Court in which I have been engaged, and that I was told it only existed in the Westminster Court for the benefit and protection of the profession?

C. J. W.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

STATE OF THE ASSOCIATION.—APATHY OF THE PROFESSION.—THE PRESS.

THE elaborate and able Report of this Association with which we have been favoured is too long for entire insertion in these columns, except by dividing it under the several subjects which it comprehends. For the present, therefore, we select such portions as our space will permit, commencing with such parts as relate to the state of the Association; the apathy of the Profession; and the advocacy of professional interests by the Press.

The Report commences thus:—

"In presenting to the members of the Metropolitan and Provincial Law Association this, their Fourth Annual Report, the Committee of

Management will, as on former occasions, begin by noticing such of their proceedings, during the past year, as have had peculiar reference to the welfare of the profession as such, and will then shortly state the steps they have taken to represent and give effect to the views of the profession, upon the various subjects that have come before them, in the respective branches of the theoretical and practical jurisprudence of the country. The members will thus be enabled to form an opinion of the value of this association, which is the only one in existence that represents equally, not only in its membership, but in its government, the whole profession of the country, provincial as well as metropolitan; and to decide whether its actual strength ought to be considered satisfactory; or whether it ought not rather to be regarded only as a sign of what might be acquired by more general and cordial co-operation; and, as such, be an incentive to renewed and increased exertion, on the part of the present members, in their respective localities, greatly to add to the number of its subscribers, and thereby proportionately to increase its power and practical utility.

"The Committee have not, during the past year, made any addition to their own body. They already comprise members residing in 20 of the principal provincial towns, which number they would gladly see considerably extended; as they have always been anxious to see associated with themselves a representative from every considerable group of subscribers, and especially from such towns as Bath, Bristol, Chester, Derby, Cambridge, and Norwich, where, however, at present, they regret to say, the number of their subscribers is very small. Under the 5th Law of the association, every provincial member of the Committee receives a copy of the minutes of every meeting of the managing Committee; and it is evident that this arrangement affords a ready means of calling the attention of the profession, throughout the country, to every subject of importance as it arises."

The Committee regret that in reporting on the existing state of the Association, they are unable to announce any increase in the number of their members:—

"Immediately after the last annual meeting, the Committee printed the substance of the report they then presented, and a very large number were circulated. Very few gentlemen, however, joined in consequence, and the experience of the Committee convinces them that it is of very little use to attempt to call the attention of the profession to any printed statements, which are generally, it seems, even in the case

of their own members, thrown on one side unread.

"The Committee believe that their communications with the various provincial law societies have been of considerable service; and they have this year received, with very great gratification, votes of thanks for their exertions, from the societies at Liverpool, Leeds, and Hull. The Committee also, again, during the last Vacation, instructed the secretary to visit a portion of the country, in order to get into communication with the provincial members of the profession, to ascertain their views, and, if possible, to induce them to join the association. The secretary, upon this occasion, visited the towns of Cambridge, St. Ives, Peterborough, Lynn, Norwich, Yarmouth, Bury, Ipswich, Colchester, and Chelmsford; and he held meetings of the profession in all those towns, except Peterborough, Lynn, Yarmouth, and Colchester: at the last three towns meetings were summoned but no one attended; and in all of them the secretary called upon the principal local members of the profession. In consequence of these meetings, several gentlemen became subscribers to the association, and it appears probable that more will yet do so; but, on the whole, the number of new members has not been more than enough to counterbalance the diminution from death, removal and withdrawal.

"In spite of the very striking proofs afforded by the operations of the last few years, of the necessity for, and the utility of, combined action on the part of the profession, there is still, everywhere, a remarkable and lamentable amount of apathy to be contended with. The Committee trust that these Annual Reports will show to those who either hear or read them, that they have not been wanting in their endeavours to introduce a more hopeful state of feeling; and they feel that they have a right to expect some small amount of assistance from their members, beyond the mere payment of their annual subscription. They can only repeat the declaration with which they concluded their report last year, that 'they are at all times ready cheerfully to give their labour towards the accomplishment of the great work which the course of legislation, and the continual changes which are being introduced into the practice of the profession, render of such essential importance. But the effectiveness of that labour must always depend on the amount of funds placed at their disposal; and in order to sustain and augment these, they must look principally to the individual exertions of all their brother members.'

"There are now upon the books of the association, 271 metropolitan, and 632 provincial members, of whom 155 are life and 748 annual subscribers.

"During the year, including arrears, 1 life and 572 annual subscriptions have been received. The income of the association has amounted to £241. 6s. 1d.; the expenses to £261. 19s. 3d."

We are glad to find that the Committee

¹ The Incorporated Law Society in its membership, comprehends not only the attorneys and solicitors of England and Wales, whether residing in town and country, but also, in Ireland and Scotland.—Ed.

continue to give their best attention to the very important subject of the Press:—

"The experience of every day only confirms their conviction, that an adequate representation in the Press is an absolute necessity for any body of men who are desirous of occupying an honourable position, and enjoying the favourable consideration of the public; while it is equally manifest that attorneys and solicitors possess no such adequate representation. The difficulties by which the subject is beset are very great, and the Committee have not yet seen their way to overcome them. As a body, the attorneys and soliditors are far from wealthy; they are extremely scattered; and the nature of their occupations renders literary labour unusually difficult, while it has by no means a certain tendency to advance them in their professional career. It has been suggested to the Committee to issue, themselves, such a periodical as would supply the want they have so often pointed out; but the necessary pecuniary liability would be so heavy, that they feel they would not be justified in undertaking it. They have, however, during the past year, taken steps to ascertain the feeling towards the profession of some influential organs of the general press of the country. They have been much gratified at the spirit in which they have been met; and they entertain strong hopes that, before long, they may be enabled to present their views to the public, upon questions affecting their own body, through channels which will secure for them a wide circulation."

The Profession, no doubt, needs support, both from the *General and Legal Press*, and the various Law Societies need not doubt that our zealous, able, and learned contributors will pursue their labours, (notwithstanding the "apathy" of their brethren,) and that the pages of the *Legal Observer* will ever be devoted to the best interests of the practitioners as well in the country as in town. We are frequently favoured with communications, and invite still more, in order that we may effectually discharge our duty.

THE LAW OF DIVORCE.

THE COMMISSIONERS' REPORT.

THE issuing a commission of inquiry into the existing Law of Divorce is, of itself, a significant admission of the necessity of some fundamental reform of that law. For successive years the anomalies of the present system of procedure have been unavailingly pressed upon the legislature; but with all their indisposition to enter upon the task of amendment, the necessary work can no longer be evaded or delayed. The objection to entertain a subject of such vast and general interest could never arise upon principle. The difficulty of the subject has been the occasion of indifference, and

probably the chief excuse that can be pleaded for inaction.

So far as the present system throws difficulties in the way of dissolving the conjugal bond, it may find abettors even in some of the most vehement opponents of expense and delay in other branches of our jurisprudence. Recognising the expediency and wisdom of the law, which allows of divorce in certain cases, these moralists would nevertheless contravene its action by circuitous, irrational, and costly processes. If it be, however, a cherished tenet in our national ethics to uphold divorce, as a doctrine, it behoves us to remove the impediments which render its practical application difficult, if not, in many instances, impossible. Better embrace, at once, the theory of nuptial indissolubleness, than maintain it, in effect, by the perpetuation of a system which abolishes divorce, except in cases in which it is obtained after great delay and enormous cost.

The Law of England confines the dissolution of the marriage contract to the single case of adultery in the wife, and to enforce his right in this regard, the husband must have recourse to three distinct tribunals—to a Court of Law for damages against the adulterer; to an Ecclesiastical Court for a divorce *a mens et thors*; and finally to parliament for a special statute rescinding the marriage. With respect to this triple procedure, the Commissioners see no good reason for continuing the action for damages, unless, as they quaintly remark in *note*, as a means of giving "the husband a fund to recover his expenses." And "they are likewise disposed to hold, that the ecclesiastical suit, although of service as a preliminary to the looser proceedings of Parliament, might safely be dispensed with on a transfer of the rescinding power to a regular Court of Justice standing high in the confidence of the country." It will be naturally anticipated, as a substitute for the threefold existing procedure, that the Commissioners should recommend the institution of a single tribunal for granting divorces *a vinculo* in all cases where the wife shall be proved to have committed adultery, and where the complaining husband shall appear to have been blameless. But they are not prepared to advise that the wife shall have similar redress in respect of the husband's adultery. On the contrary, they rather apprehend that it will be better, for the present at least, to leave "the wife's injuries to be dealt with according to the circumstances of each case by the wisdom of the legislature."

According to the general rule of the House of Lords, where proceedings of this nature usually originate, it is an essential part of the petitioner's evidence to prove in committee on the bill, that a sentence of divorce has been obtained in the Spiritual Court, and (where the husband is the petitioner) that judgment has been given for him in some Court of Law in an action for damages brought by him against the seducer, so that the two courses of procedure, so far from "useless," (the aspect in which the Commissioners regard it,) con-

states a condition precedent to the relief sought by the injured husband.

To the recommendation of the Commissioners, no sound objection can be advanced. There is nothing in the circumstances of divorce cases to necessitate a resort to three tribunals, when one competent Court of judicature can hear and determine respecting them. Many an injured husband regards the obligation to look for damages in a Court of Law as one of the most afflictive conditions of his case.

The Commissioners advise, that the pleadings in the proposed Court of Divorce should be as brief, simple, and untechnical as may be consistent with a sufficient disclosure of the petitioner's case and the respondent's defence;

and they further recommend a *voir dire* examination of witnesses in preference to the present course of deposition—a recommendation in which we cordially concur. They then proceed to suggest a variety of considerations, incidental to the disposal of the property of the wife in cases of divorce *a vinculo*; and, as we apprehend, start, rather than solve, several knotty points which may arise thereupon in relation to the wife's pin-money, jointure, choses in action, debts before coverture, &c.

Finally, the Commissioners say, that they have not determined “whether any restraint should be imposed upon the divorced wife interdicting her from marrying the paramour, or from marrying at all during the lifetime of the injured husband.”
—From *The Globe*.

NOTICES OF ADMISSION.

In Trinity Term, 1851.

Queen's Bench.

ADDED TO THE LIST PURSUANT TO JUDGE'S ORDERS.

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Adams, Edward, 10, Liverpool Terrace, Islington; Wilmmington Square	W. S. Adams, George Street, Mansion House
Beetholme, George Law, 11, Chester Terrace, Southwark; and High Holborn	John Law Beetholme, Castle Street East, Oxford Street
Coleman, William Rose, Gosport; and Chiswell Street, Finsbury Square	Robert Cruickshank, Gosport
Fogg, William, 43, Markham Square, Chelsea; 10, Mableton Place, Cheltenham Terrace, Chelsea	John Hatley, Apple Place, Regent Street
Green, Henry George, 268, Strand	William Cadden Rhoades, Chichester
Kent, Benjamin, Newcastle-upon-Tyne	Newbegin Kent, Newcastle-upon-Tyne
Lloyd, Charles Orleans, 12, Dalby Terrace, Islington	John Loxdale, Shrewsbury
Paffard, James Henry, jun., Portsea	George Price, Portsea
Sykes, William Benyon, 5, Palgrave Place, Strand; and Bouverie Street	Joseph Elliott Collyns Walkey, and another, Exeter.
Tanner, George, jun., 69, Stanhope Street, Hampstead Road; and Crediton	George, Tanner, <i>senr.</i> , Crediton
Wilton, Robert Pleydell, Gloucester	Robert Wilton, Gloucester; P. S. Humberston, Chester.

RENEWAL OF CERTIFICATES.

The last day of Trinity Term, 1851.

Queen's Bench.

Pearson, Henry Gould, 2, Lockwood Terrace, Chelsea.
Phillips, George, Shrewsbury; and Kensington.
Saunders, John, 5, Denmark Row, Camberwell.
Taylor, John Sparrow, Clifford, Hereford.

APPLICATIONS TO A JUDGE AT CHAMBERS.

On the 18th day of June, 1851.

Queen's Bench.

Balguy, Bryan Thomas, Ockbrook.
Brodrick, Thomas, 35, Great Ormond Street.
Doran, James Annealey, St. Albans.
Griffiths, Henry, Burcott.

Hardwick, Edward, 10, Gray's Inn Place; and Frederick Street.
Ker, Thomas Collingwood, Queen's Prison.
Osbaldston, Francis James, St. Albans's
Payne, George, Bradford; and Dalton.
Peake, Frederick, 2, Gray's Inn Square; and Great Russell Street.
Pennington, James Masterman, 15, Amphilhill Square, Hampstead Road; Woburn Place; and Ridgmont Place.
Phillips, Frederick, 10, Bermondsey New Road.
Rudge, William Joseph, 40, Lemon Street.
Smallwood, Thomas, Oswestry; and Shrewsbury.
Street, James Henry, Church Row, Hampstead; Clarendon Square; Cheltenham; Clarendon Square.
Summers, Robert, 9, Barnsbury Street.
Weller, George, Brighton; Bloomsbury Square; Peckham; and Peckham Rye.

ATTORNEYS TO BE ADMITTED.

Trinity Term, 1851.

[Concluded from page 66, ante.]

- Lloyd, Geo. Alfred, Warwick-rd., Upper Clapton . Timothy Tyrrell, Guildhall
 Leaman, T. Leaman Hunt, 28, King-st., Holborn; Ashburton . Robt. Tucker, Ashburton
 Mawe, Fred. Eustace, New Bridge-st. . T. J. Mawe, New Bridge-st.
 Morris, Fras. Burdett, 1, Alliance-cottages, Montpelier-st., Camberwell . Chas. Condell, Coptball-st.
 Moore, Hen., 43, Liverpool-st., New-rd.; Argyle-st. John Harward, Stourbridge; W. Skilbeck, Southampton-buildings
 Mayo, Wm. Hen., 7, Hemingford-villas, Islington . J. T. Vining, Yeovil
 Marson, Thos. Fish, 11, Cumberland-ter., Regent's Park; Anchor-ter., Southwark . T. F. Marson, Anchor-ter.
 Metcalfe, J. Bellamy, Ordnance-road, St. John's-wood . B. P. Sqaunce; Thos. Tilson; Coleman-st.
 Mingham, Chas. Wm., B.A., Chancery-lane . Robert Mingham, Chancery lane; Wm. Dixen, Staple-inn
 Morley, Thos. Gregory, Snenton . Geo. Eddowes; John Wadsworth; Nottingham
 Mew, Jas. Alfred, 7, Staple-inn; Store-st. . J. Parker, Loughboro'; J. H. Hearn, Newport, Isle of Wight
 Makin, Thos., jun., 38, Jewin-st., City; Bedford-row . Robt. Jackson, Lancaster
 Moon, Fras, 26, Burton-street, Tavistock-square . William Owen, Denbigh; Robert W. Peake, New Palace-yard
 Metcalfe, Walter Chas., 10, Alpha-rd., St. Mary-lebone; Epping . R. B. Andrews, Epping
 Mellersh, Robt. Edmund, 11, Wakefield-st., Regent-sq.; Godalming . Thos. Mellersh, Godalming
 Matthews, Thos., Headingley, Leeds . John Sangster, Leeds
 Marsack, Geo. Richardson, Barnstaple; Andover; Everett-st.; Camden Cottages . Harry Footner, Andover, C.H. Bower, Chancery-lane
 Nicholson, Alfred, Chesterton; Huntley-st. . W. D. Bell, Bourn, Lincoln; J. O. Beck, S. Ives
 Norris, Chas. Musgrave, 36, Sidmouth-st., Regent-sq., Halifax; Leeds . A. Horsfall, Leeds
 Nichols, Sam., 10, Jeffrey's-st., Kentish Town-rd.; Alfred-st. . John Jones, Pump-ct.; Geo. Carew, Lincoln's-inn-fields
 Newman, Edmund, 6, Markham-place, King's rd., Chelsea . Thos. Dean, Swithin's-lane
 Nokes, Walter Federan, 1, Mecklenburgh-sq. . John Nokes, Mecklenburgh-sq.
 Prentiss, Hen., 2, Bath-ter., Trinity sq. . W. H. Johnson, Chancery-lane
 Pearson, Matthew Tom, Carlisle; Sheffield . T. T. Pearson, Crowle; G. P. Nicholson, Watupon-Dearne
 Payne, Alex. Rich., 1, Heathcote-st., Mecklenburgh-sq.; Milverton . John Payne, Milverton
 Peterson, Thos. Peyton, 53, Frederick-st., Gray's-inn-rd.; Honiton . R. B. Ward, Bristol; Dan. Gould, Honiton
 Prestage, John Edw., 41, Woburn-pl., Russell-sq.; Calthorpe-st.; Guildford-st. . H. Bradley, Harecourt-buildings
 Pugh, Edwd., 26, Burton-st., Tavistock-sq.; Wrexham . John Lewis, Wrexham
 Palgrave, Reginald F. Douce, Hampstead . R. R. Bayley, Basinghall-st.
 Parmeter, Robt., Chichester; Penton-pl. . R. F. Dalrymple, Bedford-row; E. W. Johnson, Chichester
 Preston, Wm. Rd., Ilford . W. T. Prichard, Newgate-st.; W. S. Long, Cornhill
 Peacock, Christopher Gilbert, Lincoln . Rich. Corline, Lincoln
 Ransom, Arthur, 3, Park-road, Stockwell; Corset-terrace; Sudbury . Robt. Ransom, Sudbury
 Renner, Chas., 32, King's-sq., Islington; Upper-Charles-st.; Sunderland . G. S. Ransom, Sunderland
 Reddish, Edwd., Stockport; Chester . E. Reddish, Stockport; J. Sprinks, St. James-st. Bedford Row
 Roach, Geo. Chas., 23, Euston-pk.; North Tyndal Rhodes, John Jackson, 23, Aston-st., Gray's-inn-rd.; Market Rasen . H. S. Coke, Neath
 Rees, John Chas., 8, Montague-pl., Islington; Fortess-ter.; Melbury-ter. . Thos. Rhodes, Market Rasen
 Rees, Herbert Williams, Portland-pl., Clapham-road . John Rees, College-hill
 Ridge, Geo., 14, Manchester-st., Gray's-inn-rd.; Sheffield . J. C. Symes, Fenchurch-st.
 Jas. Wilson, Sheffield

Roberts, Hen., 25, River-st., Myddleton-sq.; Col- ford; Monmouth; Wilson-st.	Wm. Roberts, Colford
Rusbridger, Joseph, 6, Addison-ter., Kensington	J. W. Thrupp, Oxford-st.
Robinson, Hen. Meggison, 16, Finsbury-pl., South Redgrave, John Charlton, 57, Westbourne-grave, Baywater; Granville-sq.	Messrs. Isaacson, Mildehall
Saunders, Henry, jun., 38, Liverpool-st.; Kidder- minster; Argyle-st.; Chenis-street	Edw. Corles, Worcester
Smith, Wm., 8, Wenlock-st., New North-st.; Dart- mouth	Hen. Saunders, Kidderminster
Smith, Thos. Hen., 50, Nelson-sq., Blackfriar's-rd.	B. Smith; Edw. Prior, Dartmouth
Sanders, Ben. Hadley, 67, Judd-st., Brunswick- sq.; Bromsgrove	W. W. Hastings; Wm. Best, Southampton-st.
Smith, Thos. Jas., 42, Hemingford-ter.; Liver- pool; Wellington-rds., near ditto	L. Minshall and G. C. Vernon, Bromsgrove; H. D. Johnson, Lincoln's-inn-fields
Smith, Geo. Birt, Nailsworth, Gloucester	J. N. G. Thompson; J. Atkinson, Liverpool; G. Vincent, King's Bench Walk
Shepherd, Edwin Perkins, 14, Surrey-st., Strand; Northumberland-st.; Halstead	W. Smith, Nailsworth
Simon, Robt., Oswestry	C. Willis, jun., Cranbrook
Sabine, Chas. Edwyn, 23, Haughton-st., Strand; Oswestry; Stangate; Bouverie-st.	R. J. Croxon, Oswestry
Stubbs, Fred. Stanley, Ludlow	C. Sabine, Oswestry
Saow, Fred. Aug., 26, Tradegar-sq., Bow-rd; Old Jewry	L. L. Clark, Ludlow.
Stanforth, Sam. Herbert, 34, Amwell-st., Penton- ville; Westbourne, nr. Sheffield; Norland- ter.; Manchester-st.	W. Overton, Old Jewry
Smales, Hen., jun., 26, Devonshire-st., Queen-sq.; London	J. Stanforth, Sheffield; H. Vickers, Sheffield
Shindler, Robt., 64, Cannon-st.; Canterbury	T. H. Faber, Stockton-upon-Tees
Selby, Jas. Addison, West Malling; East-st., Queen-sq.	T. Wilkinson, Canterbury
Tucker, Walter Jas., 27, Lamb's Conduit-st.; Chard; Raymond-buildings	T. Selby, West Malling
Thomas, Cadogan Morgan, 5, St. David-st., New Kent-rd.; Brunswick-st.; and Black-hall	C. B. Tucker, Chard
Thorpe, Wm. Geo., Kirton-in Lindsey	A. Cuthbertson, Neath; J. H. Rowland, Fenchurch- street
Turner, Edw. Goldwin, 16, Woburn-sq.	G. Smith; G. Thorpe, Kirton-in-Lindsey; G. White, Grantham
Træfitt, Francis, 5, Burwood-pl., Hyde-park	Charles Norris Wilde, College-hill
Tomlin, John, 9, Compton-st. East, Regent-sq.; New-inn	C. S. Fallowdown, Paper-bldgs., A. King, Earl-st., Blackfriars
Tibbitts, Fras., Warwick	T. Weldon; J. D. Holmes, Barnard-castle; W. Pringle, King's-road
Thompson, Edwin Sam., 10, Finsbury-pl. North; High-st., Marylebone	R. Tibbitts, Warwick
Taylor, Robt., Durham; Museum-st.; Tynemouth	W. Rymer; O. B. Wooller, Darlington; R. M. Reece, Farnival's-inn
Vincent, Edmund, Stoke-rd., Guildford	John Clayton, Newcastle-upon-Tyne
Williamson, Robt. Reddall, 28, Henrietta-st., Brunswick-sq.; Abergavenny	Joseph Hockley, Guildford
Wood, Searles Valentine, jun., 28, Fortess-terr., Kentish-tn.	W. F. Batt, Abergavenny
Ward, Reginald, 12, Montague-pl.; River-ter.; Old Fish-st.	W. Flower, Bedford-row
Watson, John, jun., 8, Green-st., Grosvenor-sq.	G. Faux, Thetford; J. Crowdy, Old Fish-st.
Walker, Theodore, 71, Oxford-st.	J. Wadsworth, Nottingham; J. Stuart, Gray's-inn
Wardell, Geo. Newby, 43, Parliament-st., West- minster; Liverpool	H. G. Gridley; H. Walker, Southampton-st., Bloomsbury
Whitford, Henry, 6, Gloucester-st.; St. Columb; Herbert-st.; Harcourt-buildings	W. C. Newby, Stockton-on-Tees
White, Geo., Wootton Bassett	T. Whitford, St. Columb
Walker, Thos., jun., 21, New Ormond-st.; Malton; Frederick-st.; Wharton-st.	T. Nettleton, Leeds and Castleford; J. Pratt, Wootton Bassett
Willson, John Cochet, 3, Mayfield-rd., Dalston	C. Walker, Malton
Williams, John, 26, Burton-st., Burton-crescent; Denbigh	C. Cartar, jun., Bideford
Wells, Wm., 18, Upper Phillimore-pl., Kensington	R. Williams, Denbigh
	R. B. Upton, Austin Friars

Added to the List pursuant to Judge's Orders.

Baker, Alfred, Market Deeping, Lincoln	W. Baker; T. Roberts; F. Brown, Market Deeping
Brittlebank, Geo. Goodwin, Ashbourne	John Brittlebank, Ashbourne
Fitchall, Rbt., 13, Fludyer-st., Whitehall; Brighton	H. Fitchall, Brighton

Jeffery, Geo. Abbutt, 8, Knightsbridge-st., Hyde-
park
Kelsall, Fred. Hen., 14 Upper Ponchartr-st.,
Paddington; Liverpool
Robinson, Chas. Thos., Cambridge

R. K. Lane, Argyle-st. Regent-st.

J. Robinson, Liverpool

O. R. Wilkinson, St. Neot's; W. M. Bennett, Ry-
mond-hgts.

PERPETUAL COMMISSIONERS.

*Appointed under the Fines' and Recoveries' Act,
with dates when gazetted.*

Coldicutt, Henry, Dudley, in and for the
county of Worcester; also, in and for the
counties of Warwick and Stafford. April 22.

Eyre, George Lewis Phipps, John Street,
Bedford Row, in and for the city of London;
also, in and for the city and Liberties of West-
minster, and also in and for the counties of
Middlesex, Essex, Kent and Surrey. May 16.

Harward, John, Stourbridge, in and for the
counties of Worcester, Stafford and Salop.
May 6.

Hooper, Henry Wilcocks, Exeter, in and
for the city and county of the city of Exeter;
also, in and for the county of Devon. April
25.

Nicks, Thomas, Warwick, in and for the
county of Warwick. April 15.

Winterbotham, Lindsey William, Stroud, in
and for the city of Gloucester. May 6.

MASTERS EXTRAORDINARY IN CHANCERY.

*From March 25th, to May 23rd, 1851, both
inclusive, with dates when gazetted.*

Atkinson, William Henry, Blandford. May
22.

Boxall, Edwin, Brighton. March 25.

Cornelius, Alfred Kingsford, Canterbury.
April 4.

Estlin, John, jun., Nuneaton. May 13.

Etty, Thomas, Liverpool. March 28.

Fenwick, Henry, Liverpool. March 28.

Fry, Bruges, Cheddar and Andridge. March
25.

Gramshaw, Robert, Leicester. April 1.

Green, Francis, Carnarvon. March 28.

Hall, Isaac, Manchester. May 13.

Pollock, William, Ayr, (for Scotland).
May 2.

Smith, Edward Augustus, Blandford. May 2.

Tee, James, Worcester. May 9.

Whitford, Henry, St. Columb. May 20.

Wigelsworth, Parkin, Donington. March 28.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From March 25th, to May 23rd, 1851, both
inclusive, with dates when gazetted.*

Chandler, William Lloyd, and George Bad-
ham, Tewkesbury, Attorneys and Solicitors.
April 11.

Craddock, John, and George William Crad-
dock, Nuneaton, Attorneys and Solicitors.
April 15.

Harbin, Peter Tait, and Richard Danvers
Ward, 12, Clement's Inn, Attorneys and So-
licitors. April 15.

Hicks, Christopher, and Henry Hicks,
Shrewsbury, Attorneys. May 6.

Mitchell, John, and Henry Ford, Exeter,
Attorneys and Solicitors. May 20.

Mourilyan, Joseph Noakes, and Nichols
Henry Rossell, 2, Verulam Buildings, Gray's
Inn, Attorneys and Solicitors. April 1.

Phillips, Robert Curtis, and James Nurse,
Weymouth, Attorneys and Solicitors. May 16.

Warren, Joseph Loxdale, and George Burd,
Market Drayton, Attorneys and Solicitors.
April 1.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Master of the Mails.

*Newry, Warrenpoint and Rostrekar Railway
Company v. Moss and others.* May 10, 1851.

**CALLS ON RAILWAY SHARES.—LIABILITY OF
TRUSTEE AND CESTUI QUE TRUST.**

*A bill was dismissed with costs seeking to
render liable for calls on certain shares in
the plaintiffs' railway, the defendants, who
were bankers, and who had advanced money
to C. upon the deposit of the shares which
had been transferred into, and registered in
the name of one of the defendants' clerks
on their nomination, subject to their security*

*thereon for advances, on the ground that as
between the plaintiffs and the defendants
there was no relation existing of trustee and
cestui que trust, and that the registered
and not the equitable owner, was the party
liable to the calls.*

THE defendants, it appeared, were bankers
at Liverpool, and advanced in the years 1846
and 1847, money on certain shares in the plain-
tiffs' railway to Mr. Cameron, a sharebroker,
upon their being deposited as a security, and
the shares were transferred into, and registered
in, the name of Thomas Mercer Seddon, one of
their clerks, on their nomination, in trust for
Mr. Cameron, subject to their security for ad-

most. Some of the shares had been sold, and the proceeds applied towards paying the defendants' claims, and since the death of Mr. Sedlow, other shares had also been sold by Mr. Cameron, under the defendants' direction, they having advanced the money due for calls, in order to enable the transfer to be made. The plaintiffs now filed this bill, praying for a declaration that the defendants were liable for the calls in arrears on the shares held by their clerk at the time of his death, and for an account of the calls and interest due on the shares.

Roswell and Anderson for the plaintiffs; *Lloyd and Ellis* for the defendants.

The Master of the Rolls said, that the plaintiffs could only resort for payment of the calls to the registered owner of the shares under their act, and not to the equitable owners, as the relation of trustee and *cestui que trust* did not exist between the plaintiffs and the defendants; and the bill must be dismissed with costs.

May 27.—*Morgan v. Morgan*—Judgment on construction of will.

—*37.—Hall v. Hall*—Stand over.

—*37.—Bush v. Watkins*—Judgment on construction of marriage settlement.

—*37.—Dew v. Clarke*—Petition refused to discharge prisoner out of custody for contempt for nonpayment of money, but granted so far as related to the non-delivery of deeds.

Vice-Chancellor Knight Bruce.

Ashton v. Lord Langdale and others. May 2, 1861.

CHARITABLE BEQUEST.—MORTMAIN ACT.—RAILWAY MORTGAGES.

Held, that the Mortmain Act does not apply to a bequest of canal or railway shares, or railway debentures or bank shares, but that mortgages of the undertakings and of the tolls of railways which come direct from the corporations are within the words of the act, as being a charge on hereditaments, namely, on the tolls or the lands from which the tolls are obtained. So held, upon a bequest of the testator's residuary personal estate, which included these various kinds of property, to the Commissioners for the Reduction of the National Debt.

The testator, John Ashton, by his will, dated 10th November, 1836, gave and bequeathed all the rest, residue, and remainder of his personal estate and effects, after payment of the several legacies or sums of money thereinbefore given or bequeathed by him, to the Honourable the Commissioners for the time being of the Sinking Fund of the United Kingdom of Great Britain and Ireland, to be applied by them according to the directions and regulations of the laws and statutes in force for the time being for regulating and applying the said fund in or towards the extinction or reduction of the national debt of the said United Kingdom, or in such other uses and purposes as would permit.

The testator's estate consisted *inter alia* of railway shares, railway debentures, canal shares, waterworks shares, banking company's shares, turnpike tolls, and railway mortgages.

Solicitor-General and *W. M. James* for the Commissioners; *Russell, F. Colvert, R. Palmer, Baggallay, Bury, and Hobhouse* for other parties.

The Vice-Chancellor said, that the canal and railway shares, and railway debentures and bank shares, were not within the Mortmain Act, but that inasmuch as the mortgages of the undertakings and of the railway tolls came directly from the corporations, and were a charge on hereditaments, namely, the tolls or the lands from which they were obtained, they were within the act and their bequest was void. Costs as between solicitor and client to come out of the estate.

Esposito Carter, in re Carter. May 10, 1861.

ADJUDICATION IN BANKRUPTCY.—JURISDICTION OF DISTRICT COMMISSIONER TO HEAR PETITION TO ANNUL.

A petition for adjudication was presented in the District Court of Bankruptcy on Feb. 15, 1851, and the adjudication was advertised on the 28th Feb.; on the 19th March, the bankrupt presented his petition in the same Court to have the adjudication annulled, on the ground that the petitioning creditor had voluntarily discharged the bankrupt, and therefore, there was no debt to support the adjudication: the Commissioner having decided, he had no jurisdiction, held, that he had such jurisdiction and that this appeal being in time, the adjudication must be annulled with costs.

THIS was a petition of appeal against the decision of one of the district Commissioners refusing to hear a petition to annul the adjudication of bankruptcy in this case. It appeared that the petitioning creditors had taken the bankrupt in execution, but had consented to his discharge; and then presented their petition for adjudication on the 15th Feb. 1851, and the adjudication was advertised on Feb. 28. The bankrupt having presented on March 19 a petition to annul the adjudication, on the ground there was no petitioning creditors' debt, and the Commissioner having refused it as not having jurisdiction, the bankrupt now appealed.

By the 12 & 13 Vict. c. 106, s. 12, it is enacted, that "the Court, in the exercise of its primary jurisdiction by virtue of this act, shall have superintendence and control in all matters of bankruptcy, and shall hear, determine, and make order" "in any other matter (whether in bankruptcy or not) where the Court by virtue of this act has jurisdiction over the subject of the petition or application, save and except as may be by this act otherwise specially provided,—and subject in all cases to an appeal to such one of the Vice-Chancellors," &c., "provided always, that if no such appeal shall be entered within 21 days from the date of any decision or order of the Court, and be

thereafter duly prosecuted, every such decision or order shall be final."

Daniel in support; *Swanston* and *W. W. Cooper*, contra, contended the appeal was too late.

The Vice-Chancellor held that the appeal was in time, and that the Commissioner had jurisdiction to hear the petition to annul, and that as it appeared there was no petitioning creditors' debt, the adjudication must be annulled with costs.

May 27.—*Hutchins v. Hutchins*—Judgment on further directions.

Vice-Chancellor Lord Cranworth.

In re Imperial Bank of England, ex parte Woolley. May 1, 1851.

WINDING-UP ACT.—CONTRIBUTORY.—EXECUTOR.—SIGNATURE OF SUBSCRIBERS' AGREEMENT.

G. W. and his son, J. W., applied for shares in a banking co-partnership, and the former received an allotment of 40 and the latter of 15 shares, and a deposit of 1s. per share was paid. G. W. afterwards agreed to take his son's shares and repaid him the 15s. and signed the scrip certificates and subscribers' agreement in his own name and in his son's name, and paid the deposits and received the dividends on the whole. Upon his death, J. W., as executor, executed a transfer of the whole 55 shares, but it was inoperative, no notice having been given thereof to the directors.

Held, upon a reference for winding up, that J. W. was not liable as a contributory in respect of the 15 shares, and the Master's decision excluding him from the list was confirmed.

MR. GEORGE WOOLLEY and his son, Mr. James Woolley, had applied for and obtained allotments of shares in this company, but the former, to whom 40 shares had been allotted, agreed to take also his son's 15 shares, on which the deposit of 1s. per share had been paid to the bank. Mr. James Woolley accordingly repaid the 15s. and signed the scrip certificates, as also the subscribers' agreement, in his own and his son's name, and paid the deposits and received the dividends on all the shares. Upon his father's death, in 1838, Mr. James Woolley was appointed executor, and transferred in that capacity the 55 shares, but the transfer, from want of notice to the directors, was inoperative. Master Farrer having, upon a reference to wind up the company, held that Mr. James Woolley was not liable as a contributory for the 15 shares, this appeal was presented.

Bacon and *J. V. Prior*, for the official manager, in support; *Bethell*, *Selwyn*, and *Daniel*, contra, were not called on.

The Vice-Chancellor said, that as it appeared the father, Mr. George Woolley, had dealt with the whole of the shares as the owner, and had

signed the subscribers' deed for his son, who had never executed it, the latter was not liable as a contributory and the appeal must be dismissed.

May 27.—*Beman v. Rufford*—Part heard.

Vice-Chancellor Turner.

North Staffordshire Railway Company v. Whieldon. May 8, 5, 6, 1851.

RAILWAY COMPANY.—COMPENSATION FOR LOWERING TURNPIKE ROAD.—WHETHER INCLUDED IN FORMER AWARD.

An agreement of reference to arbitration of the compensation to be paid for certain lands belonging to the defendants required for the purposes of the plaintiffs' railway, provided that it should include compensation for severance or otherwise, and also all compensation for damage to be sustained by the railway passing by the mansion house, but it was agreed that the power of the arbitrator should not include the value of the rights and interests of the tenant of the Grove House, nor any damage to be occasioned to the adjoining lands in the execution of the works. The railway company having lowered a turnpike road leading to the defendants' lands, held, that the compensation to be paid in respect thereof was not included in the amount awarded under the agreement.

UPON the plaintiffs requiring certain lands, forming part of the Fenton Grove Estate, Warwickshire, and belonging to the defendants, for the purposes of their railway, an agreement was entered into in September, 1846, between the parties by which the amount to be paid for the same was referred to arbitration, to include all damages by way of compensation for severance or otherwise, and also for damage to be sustained by the railway passing by Fenton Hall, and it was also agreed, that the power of the arbitrator should not include the value of the rights and interests of the tenant of Fenton Grove House, nor any damage to be occasioned to the adjoining lands in the execution of the works of the railway. The company paid the sum awarded of 10,500*l.*, and proceeded to form their railway, but having lowered a turnpike road leading to the defendants' lands, the defendants claimed 600*l.* for damages sustained thereby, and proceeded under the 8 Vict. c. 18, s. 68, to assess the amount of compensation, and upon the jury awarding 500*l.* for the damages, and 15*l.* for the temporary occupation of the road, the defendants brought their action to recover the amount, whereupon the plaintiffs paid the money into Court and filed this bill, execution being stayed.

Malins and *Bovill*, for the plaintiffs, contended, that the sum awarded included the whole of the damages sustained; *Bacon* and *Campbell*, for the defendants.

The Vice-Chancellor, after taking time to consider, held that the damage arising from the lowering of the turnpike road was not

overed in the former compensation awarded, and dismissed the bill with costs.

May 27. — *Attorney-General v. Bishop of Worcester*—Part heard.

Court of Queen's Bench.

Regina v. Dale. May 7, 1851.

SCI. FA. TO ENFORCE BAIL.—DEMURRER.—ONE OF JUSTICES DESCRIBED BY INITIALS.

A demurrer was overruled to a sci. fa. to enforce a recognizance of bail, on the ground that one of the justices before whom the recognizance had been entered into was described as "J. H. Harper."

THIS was a demurrer to a sci. fa. to enforce a recognizance of bail which had been entered into before Mr. Lee Townsend and Mr. J. H. Harper, two of her Majesty's justices of the peace, on the ground that one of the justices' names was not set out in full, but only with the initials.

Cole in support; Cowen, contra, was not called on.

The Court said, that the cases, to which reference had been made at bar, in which it had been held ground of demurrer to declarations on bills of exchange in which the name was set out with initials only, did not apply in criminal proceedings, and overruled the demurrer. Judgment for the Crown.

Blosser v. Rashman. May 14, 1851.

COUNTY COURTS' EXTENSION ACT.—APPEAL.—DEBT UNDER 20L.

An appeal under the 13 & 14 Vict. c. 61, s. 14, from the decision of a County Court judge holding that a bankrupt's certificate which he had obtained prior to the judgment against him in the County Court, did not protect him from such judgment, was dismissed, the amount of the debt for which the judgment was recovered being under 20l.

THIS was a plaint in the Norfolk County Court, held at Great Yarmouth, against the defendant who had obtained his certificate in bankruptcy prior to the judgment of the Court, and it was therefore contended was protected therefrom. The judge, however, having decided that such certificate was no protection, this appeal was presented against his decision.

Bransell in support; Willis, contra, on the ground that the amount for which the defendant had been sued was under 20l., citing the 13 & 14 Vict. c. 61; s. 14, which enacts, that "if either party in any cause of the amount to which jurisdiction is given to the County Courts by this act shall be dissatisfied with the determination or direction of the said Court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any of the Superior Courts of Common Law at Westminster."

The Court said, that under the 13 & 14 Vict.

c. 61, s. 14, the objection must prevail, and dismissed the appeal.

May 27.—*Cort v. Ambergate, Nottingham, Boston and Eastern Junction Railway Company*—*Cur. ad. vult.*

Court of Common Pleas.

Booth v. Choe. April 23, 24, 1851.

COUNTY COURTS' ACT.—ACTION AGAINST JUDGE FOR FALSE IMPRISONMENT.—NOTICE OF ACTION.—ACTING "IN PURSUANCE" OF STATUTE.

Held, on motion for and refusing a rule for a new trial, upon the ground of misdirection, of an action brought against a County Court judge for false imprisonment by the plaintiff, who had been committed under his order for nonpayment of an instalment, notwithstanding he had obtained a discharge from the Insolvent Debtors' Court, the debt in question being included in his schedule, and the judge having disregarded a prohibition from the Court of Chancery, that the judge was entitled to notice of action under the 9 & 10 Vict. c. 95, s. 138, inasmuch as he had proceeded with the cause honestly and bona fide believing that he was called upon to do so, and therefore acting in pursuance of the statute.

THIS was a motion for a new trial, on the ground of misdirection, of this action, which was brought against the defendant as Judge of the Southwark County Court, to recover damages sustained by the plaintiff for his false imprisonment under the defendant's order of commitment. It appeared the plaintiff had been ordered to pay the amount of debt for which he had been sued in the Court by instalments, and had been committed upon nonpayment of one instalment, whereupon he petitioned the Insolvent Debtors' Court, inserting the debt in his schedule and obtained his discharge. Subsequently he was summoned for nonpayment of another instalment, and, notwithstanding his order of discharge, was again committed, and the plaintiff then obtained a writ of prohibition out of Chancery to stay the proceedings, and an order for the plaintiff's commitment having been nevertheless made, this action was brought, to which the defendant pleaded that he had no notice of action, the grievances complained of being committed after the passing of and in pursuance of the County Courts' Act. The plaintiff replied denying that the grievances were committed in pursuance of the act; but, on the trial, the Lord Chief Justice directed the jury that if the defendant had acted reasonably and bona fide in the belief that he was doing right, he was acting in pursuance of the statute, and the defendant obtained a verdict.

By s. 138 of the 9 & 10 Vict. c. 95, it is enacted, that "all actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be tried and tried in the county where the fact was com-

mitted, and shall be commenced within three calendar months after the fact committed, and not afterwards, or otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action."

Humphrey, Q. C., in support, cited *Iveson v. Harris*, 7 Ves. 257.

Cur. ad. vult.

The Court said, that the true principle was, that if the defendant proceeded with the cause honestly believing it to be his duty to do so, he was protected and entitled under the statute to notice of action, and held that there was no misdirection, and refused the rule.

May 27.—Bast' Anglian Railway Company v. Eastern Counties' Railway Company—Rule nisi to set aside judgment signed herein.

—27.—*Johnston v. Miton*—Rule to enlarge peremptory undertaking to try at Sittings after Easter Term last to those after the present term.

Court of Exchequer.

Gobbett, pauper, v. Grey. May 13, 1851.

PAUPER PLAINTIFF. — ORDER TO DISPAUPER. — REFUSING TO ADMIT DOCUMENTS ON SUMMONS.

The Court discharged with costs a rule to set aside a judge's order, to dispauper a plaintiff who had refused upon summons to admit certain documents as had been done in former actions, brought by the plaintiff against the same defendant.

THIS was a rule nisi to discharge an order of Mr. Baron Platt at Chambers, dispaupering the plaintiff in this action, which was brought against the Home Secretary to recover compensation in reference to the plaintiff's classification amongst the prisoners in the Queen's Prison. It appeared that the plaintiff had refused to admit certain documents which had been so done in former actions, and on the summons before the learned baron, his lordship was dissatisfied with his refusal, and made the order in question.

Welsby showed cause; the plaintiff in person in support.

The Court discharged the rule with costs.

May 27.—Grapes v. Bunney—Rule absolute for new trial, or *stet* processus.

—27.—*Ware v. Barnett*—Rule discharged upon reduction of damages to 80*l.*, by consent.

—27.—*Graham and others v. Iscomonger*—Rule absolute to enter a nonsuit.

Court of Exchequer Chamber.

Regina v. Hallett. April 26, 1851.

INDICTMENT FOR PERJURY. — OATH ADMINISTERED BY ARBITRATOR APPOINTED UNDER 9 & 10 VICT. C. 95, s. 77.

Held, that an arbitrator has not power under

the 3 & 4 Wm. 4, c. 42, s. 41, upon a reference directed by the Judge of a County Court, under the 9 & 10 Vict. c. 95, s. 77, to administer an oath to a witness, and a conviction was therefore quashed on an indictment for falsely swearing before an arbitrator so appointed.

THIS was an indictment for perjury committed before an arbitrator, who administered the oath, in an arbitration directed by the Judge of a County Court, under the 9 & 10 Vict. c. 95, s. 77, which enacts, "that the judge may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the Court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner, and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party except by the consent of the judge; and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the judge: provided that the judge may, if he think fit, on application to him at the first Court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid."

The prisoner having been found guilty, the point was reserved, whether the arbitrator had authority to administer the oath.

Skinner, for the prisoner, contended, that the 3 & 4 Wm. 4, c. 42, s. 41, which provides, that "when in any rule or order of reference, or in any submission to arbitration containing an agreement, that the submission shall be made a rule of Court, it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, it shall be lawful for the arbitrator or umpire, or any one arbitrator, and he or they are hereby authorized and required, to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of oath; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall be prosecuted and punished accordingly," did not apply to the present case, and therefore, that the oath should be administered by the proper officer of the Court.

McMahon, contra.

The Court said, that as there was no implied authority in the 9 & 10 Vict. c. 95, s. 77, under which references were directed, to administer an oath, and the 41st section of the 3 & 4 W. 4, c. 42, did not meet the present case, the arbitrator had no authority to administer the oath, and the conviction must be quashed.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JUNE 7, 1851.  
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COUNTY COURTS' FURTHER EXTENSION BILL.

COMPLAINTS OF THE BAR.

As already intimated, the County Courts' further Extension Bill, as amended and modified by the House of Lords, has been adopted by the government and was read a second time in the House of Commons, upon the motion of the Attorney-General, without any serious discussion, but with the understanding that the details are to be considered in a Committee.

We regret to learn that it is intended, upon the suggestion of what we should fain believe to be a small portion of the Junior Bar, to renew in a Committee of the House of Commons, the unsuccessful attempt already made in the House of Lords to repeal the enactment contained in sect. 91 of the County Courts' Act, by which it is provided, that "no person shall be entitled to appear for any other party to any proceedings in any of the said Courts, unless he be an attorney of one of her Majesty's Superior Courts of Record, or a barrister at law instructed by such attorney, on behalf of the party," &c. The restriction embodied in this provision, against barristers acting in the County Courts without the intervention of an attorney, is merely a statutory recognition of a salutary rule of etiquette, which has long been established and generally adopted by the Bar. In the recent case of *Doe dem. Bennett v. Hale*,¹ in which the Court of Queen's Bench held, that in ordinary cases the law did not prohibit a barrister from receiving instructions directly from the parties to a cause, without the intervention of an attorney, Lord Campbell, who delivered the judgment of the Court, emphatically observed, that "the interven-

tion of the attorney between the counsel and the party has greatly contributed, not only to the dignity of the Bar, but to the improvement of English jurisprudence."

Why the legislature should be importuned, therefore, to repeal an enactment, in accordance, not only with the established etiquette of the Bar, but with an etiquette the observance of which, according to the highest authority, has been productive of the greatest advantage to the legal profession and the public, it is not, at first sight, very easy to understand? It is quite manifest that the provision in the County Courts' Act is only operative in respect of members of the Bar who are regardless of the honourable understanding existing in that branch of the profession. That there are such persons amongst the Bar,—although the number we believe is extremely limited,—for whose malpractices the County Courts afford peculiar facilities, no one can any longer doubt. The great bulk of the profession is in no respect affected by a regulation the adherence to which is enforced by considerations more obligatory than any to be found in the Statute Book. The law only acts as a restraint upon those who ought to be restrained. Then why seek for its repeal? The answer to this inquiry is to be found in the articles appearing constantly in that large portion of the legal press which is conducted exclusively by barristers, and in pamphlets published avowedly by members of that branch of the profession. It is quite clear that the exclusive advocacy of causes in the County Courts is coveted by the Bar, and that "the crumbs that fall from the rich man's table," are grudged to the attorney! The public grounds upon which the Bar seek to alter the established practice and to obtain the privilege of exclusive audience in the County Courts, are thus stated in a pamphlet re-

¹ Reported 19 Law Jour. Q. B. 353.
VOL. XLII. No. 1,213.

cently published by "a Barrister of the Inner Temple," in the form of a letter, addressed to "Sir Alexander Cockburn, M. P., her Majesty's Attorney-General."²

"Why should not the County Courts, like the Courts of Quarter Sessions, be made the arena wherein the junior members of the Bar might train themselves by early practice, and form a school of advocates for the Superior Courts; instead of being made the means of depriving the Bar of a large portion of its proper business? There is no royal road to distinction at the Bar, any more than in any other walk of learning: pleading below the Bar,—practice at Quarter Sessions,—or a miracle, as the saying is,—have hitherto been the only means by which a barrister could hope to gain advancement in his profession. Happily for the ends of justice, the establishment of the County Courts is the first step towards the demolition of that system of nice hair-splitting dialectics, yeelp special pleading; and it may not be long ere the chief portion, if not the whole criminal jurisdiction of the Courts of Quarter Sessions, be transferred to the judges of the County Courts. Then, why not allow the Bar to follow out the practice of their profession in the new channels thus open to its exercise?

"I ask for no statutory enactment to enable the Bar to do this: all I urge is that there be left to us the privileges and rights which, as being essential to our very existence, we have hitherto enjoyed without disturbance. Leave to the Bar the right of exclusive audience, and the right to be instructed by the parties to the action. By taking away both these rights, you at once enable the attorneys practising in any County Courts to unite the two professions in one, while you deprive us of the means of resisting the combination they are attempting to form, in order to monopolize the whole business, and exclude the Bar from regular practice in the new Courts."

Our readers will probably participate in the surprise we feel at learning, for the first time, that there is a combination forming amongst the most numerous class of the profession to monopolize the business of the County Courts, and exclude the Bar from practice in those Courts. The combination, we have reason to think, exists only in the mind of the pamphleteer. Experience led us to believe that the attorneys who practise in the County Courts were but too well pleased when a legitimate opportunity arose which enabled them to avail themselves of the services of a barrister in those Courts; but the niggardly scale of fees allowed to practitioners in the County Courts, and the liberal spirit in which the proceedings are

conducted, and the dissatisfaction with which they are regarded by the suitors, combine to oblige the attorney practising in the County Courts constantly to dispense with the assistance and exemption from responsibility derived from the employment of a professional advocate. The whole case put forward on the part of the Bar proceeds on a misapprehension of facts. No monopoly exists or is sought to be obtained; and the "abuse" which is said to have arisen in the practice of advocacy by attorneys in the County and other Courts is purely imaginative. The matter is thus stated by Mr. John Warrington Rogers, of the Home Circuit, in a pamphlet now lying before us, in the shape of a letter addressed to Lord Campbell, and the same fallacy runs through all the anonymous publications upon the subject. According to Mr. Rogers—

"An abuse has sprung up in the Bankruptcy Court, County Court, and other Inferior Courts, in which suitors have, by parliamentary enactment, a right to appear and plead by attorneys, without the aid of counsel: a most useful provision; if honestly acted upon; as in many cases in such Courts there is no need for the expense consequent upon the employment of two legal agents; yet, never intended to be abused in the manner in which it has been, viz.—by one attorney acting as an advocate instructed by another attorney, from whom the advocate-attorney receives a brief of the same length and a fee of the same amount as counsel would do: the instructing attorney often being the partner of the advocate-attorney, as is well known to be the case with certain persons at the present time in the Bankruptcy Court. This is no saving and no advantage to the suitor, and an injustice to the junior members of the Bar. This is retaining the expense of two legal agents, without any of the security and advantage to the public consequent on the present distinction between the two branches of the profession. If a man wish to be purely an advocate, let him come honestly to the Bar: that he may do so, and that successfully, we have some illustrious examples."

The indignation (not too well expressed) of Mr. Rogers, we believe to be without foundation. It is not unusual, as far as we can learn, in the County Courts, the Bankruptcy Court, or any other Court, for an attorney to act "as an advocate instructed by another attorney, from whom the advocate-attorney receives a brief of the same length, and a fee of the same amount, as counsel would do." The fact, that neither the fee nor the brief would be allowed to the instructing attorney upon taxation, is a sufficient protection against the abuse.

² Entitled "Advocacy in the County Courts," Sweet, Chancery Lane, 1854.

of such a practice as Mr. Rogers erroneously supposes to exist, and we venture, with some confidence, to assure the learned gentleman, that if he enquires of those most competent to afford him information, he will find that the case which he states is "well known," in reference to "certain persons at the present time in the Bankruptcy Court," never, in point of fact, did occur. The state of circumstances which has given rise to all this misapprehension is shortly this:—In the Bankruptcy Court, the County Courts, and some other inferior Courts, the nature of the causes and of the professional duties required in reference to them, do not render it necessary or expedient to incur the expense consequent upon the employment of counsel. Certain members of the other branch of the profession are regular attendants of those Courts, and devote themselves peculiarly to the one description of practice or the other. The attorneys and solicitors who are not constant practitioners in these Courts avail themselves occasionally of the services of their brethren who devote themselves chiefly or exclusively to this branch of practice, in the light of agents rather than as counsel, and we really cannot conceive that a conventional arrangement of this description is fairly open to objection. The attorneys and solicitors, as a body, we venture to assert, are the last to desire or propose that the distinct functions belonging to the two branches of the profession should be confounded. They regard without jealousy the other branch of the profession, but it can hardly be expected that they should submit to an encroachment upon privileges the enjoyment of which is so exorbitantly taxed.

REGISTRATION OF ASSURANCES.

OBJECTIONS TO THE "AMENDED" BILL.

THE Incorporated Law Society have issued a statement containing a series of important objections to this measure. In the first instance, after admitting that a General Register of Deeds is *theoretically* desirable, they proceed to state the difficulties which surround all plans hitherto proposed. They say—

"All lawyers who, from the time of Lord Bacon to the present day, have given their attention to this subject, appear to be agreed in this,—that a cheap, simple, and complete, Register of Assurances is desirable; and that a system which is not cheap, simple, and complete in its details, will be mischievous.

"But here agreement ends. Hitherto no

plan has been produced which would bear the test of close and severe examination. Each in turn has been found open to insuperable objections in its details, and many practical men have given up the pursuit of the object as unattainable.

"The only registers in this kingdom are those of Middlesex and Yorkshire; and the Real Property Commissioners, on whose report the present bill was originally founded, in stating that the system there established cannot be adopted for a general register, express the opinion of the profession.

"The Irish system of registration is ruinously expensive, and furnishes no other assistance than to illustrate the mischiefs of an imperfect system.

"In the practical details, therefore, of any plan of registration, the whole difficulty lies; and it is manifestly indispensable that the legislature should have before it a plan in all its details, and be satisfied, by the clearest evidence, that the system will work well, before the measure receives parliamentary sanction.

"The system must be simple and intelligible, as it will affect the largest as well as the smallest properties; it must be inexpensive, or it will operate as a bar or a discouragement to the acquisition of small properties; the register must be accessible to all entitled, for legitimate objects, to inspect it, or it will be useless; but it ought to be so constructed as to disappoint impertinent curiosity, or the mischiefs will be insupportable; and especially it ought to be sealed against the expectant and inexperienced heir, and the class of men who become rich by preying on thoughtless reversioners."

The present bill, as altered by the Select Committee of the Lords, is then examined and discussed as follows:—

"The bill originally introduced into the House of Lords was founded mainly, if not altogether, on the Report of the Real Property Commissioners, made in July, 1850.

"The Commissioners were not unanimous; two of the body dissented on the question of maps from the opinion of the majority.

"An essential part of the scheme proposed by the Commissioners was, that maps should be provided of the whole kingdom, delineating every boundary of every property, and indicating the ownership by an index.

"The Commissioners, in their report, noticed a plan of registration known as Mr. Duval's plan, and remarked that the most serious objections to that plan would be effectually removed by the use of an index *founded on maps*; and added, 'It is only, we conceive, by the application of a public map to registration, that any hope can be entertained of this result. A public map is the only description we think which can be permanently useful for this purpose.'

"In support of the bill it has been remarked, of transactions connected with land, particularly in small properties.

with reference to maps, that the defect that most strongly applied to any plan without the maps was that there would be nothing to connect the deed with the land to be conveyed by the deed; but if the maps and indices were to be employed as proposed, that difficulty would be greatly simplified.

"In the bill as brought in, the maps occupied a prominent place; indeed the whole scheme was based on them. The bill was read a second time, and referred to a Select Committee.

"Several petitions, principally, though not exclusively, from solicitors in London and the country, were presented, pointing attention to the evils which were anticipated from the measure.

"Amongst others was a petition from the Incorporated Law Society of the United Kingdom, which was presented by Lord Lyndhurst, and referred to the Select Committee, and printed for their use.

"It will probably excite some surprise that, notwithstanding what was stated by the Commissioners in their report, and again urged on the second reading, as to the necessity of maps in any system of registration, the Select Committee struck out of the bill every provision relating to maps, and introduced a clause for providing, at a future period, and after the commencement of the register, *such maps as the registrar may deem useful*, without any limit to the expense, beyond what the Treasury may see fit to impose.

"On the second reading, it was said, '*As to the mode of indexing by alphabetical arrangement of grantors*, to show how inconvenient it was, their lordships would just think the hundreds of Smiths and Joneses who executed deeds every year in Middlesex, and that the only way of finding out with certainty all the facts about any one property was by going through all the deeds of all the Joneses or of all the Smiths in the register;' and it was proposed to avoid this enormous evil by the system of maps and a land index.

"The maps and land index having disappeared from the bill, of course it became necessary to furnish a substitute; and the only substitute which the Select Committee have been able to suggest, is an *alphabetical index of the names and additions (if any) of grantors* for each district, in which an entry is to be made opposite to the name of the grantor, containing a reference to the head under which the assurance is entered in the index of titles.

"The practical working of this system, it is apprehended, will be that innumerable errors will be committed in making entries in wrong districts; and it is clear that the addition of the grantor, which is often changed, will not relieve from the necessity of reference from the alphabetical index to the titles' index in each case."

None of the objections adverted to in the petition of the Incorporated Law Society, appear to have been removed.

"It has, indeed, been alleged that this petition principally dwelt on the circumstance that, within the experience of the petitioners, very few cases had occurred in which *purchasers of estates had lost the property they had bought through bad titles*; and it was observed, that to guard against that evil was *not the foundation of the bill*, and that its object was *to prevent the enormous expence of guarding against that danger*.

"In the remarks on the second reading, it was said, 'The practical evils the bill was calculated to prevent were these:—*First, there was insecurity of title*; next, expense and delay in alienation and mortgage; and next, inconveniences arising from the want of a place where deeds might be deposited, so as to be accessible to those who had need to consult them. *Insecurity of title was an evil of the greatest magnitude*.'

"If the object of the bill was to prevent the enormous expense of guarding against insecurity of title, it is somewhat remarkable that this fact should have been taken for granted, and that neither the Commissioners nor the Select Committee should have had before them the smallest particle of legitimate evidence that the expense of guarding against insecurity of title was 'enormous' or otherwise. The persons most competent to give information on this subject were the solicitors or their clients; and if for any reason the solicitors were to be passed by, it was competent for their clients, the landowners of the kingdom, by producing their bills of costs, to show how far the allegation could be supported.

"It is not foreign to the subject here to remark, that, of all the thousands and tens of thousands of landowners of the kingdom, who have to pay these 'enormous expenses,' not one has presented a petition complaining of them, or told the legislature that he has sustained loss by the suppression of deeds, and scarcely any one has in any way shown the slightest wish for, or interest in, the measure."

The petition of the Law Society puts forward many objections to the measure, besides the one adverted to.

"The bill, as altered, leaves it wholly in the discretion of the registrar, a single individual, appointed during good behaviour, to divide England and Wales into as many districts as he may, in his uncontrolled judgment, think fit; and with the consent of the Lord Chancellor, to say when the act shall come into operation; and the bill contains no rules, or advice, or suggestion to guide, or assist, or control him in the exercise of this discretion.

"It is submitted that it is highly objectionable to depute, to such an extent, the powers of parliament to an irresponsible individual, and leave him to deal with difficulties which the legislature has not been able successfully to grapple with.

"One of the most grievous evils of the proposed system will be the increased expenses

"It has been insinuated, in no very kind or courteous terms, that the objections of solicitors to the proposed measure are founded in selfishness. It is the unanimous opinion of solicitors, that the proposed measure will increase their fees on each transaction of purchase or mortgage, but they object to it on behalf of their clients, whose interests they desire to protect; they feel that their first duty is to their clients, and that so long as the noblemen and gentlemen, landowners of this country, continue to rely, cheerfully and confidently, on the integrity and zeal of their solicitors, they can well afford to disregard unfounded imputations of sinister and unworthy motives."

This is well and justly said and should be fearlessly acted upon.

DUTY OF SOLICITORS.—MEETING OF LAND-OWNERS IN 1834.

To the Editor of the Legal Observer.

SIR,—It is to be hoped that solicitors will never be prevented from the discharge of that duty which they consider to be owing by them to the public, of communicating always such information as their professional experience enables them to acquire on any important legal question, by the fear of any unmerited imputations to which they may be subjected. To those who charge them with selfish motives in their opposition to the Registration Bill it will be sufficient to refer to the bill itself, as a proof that, were they governed by their own interest, their endeavours would have been exerted in support of it.

An assertion has been made, that had it not been for solicitors "who don't like their profits interfered with," a General Registration Bill must have passed the Legislature long ago.

Although this calumny is scarcely deserving of notice, I beg leave to draw attention to the meeting held in the town of Wakefield, in the year 1834, when a bill was pending in parliament which in many respects was less objectionable than the one now under discussion. At that meeting the late Lord Harewood presided, and it was attended by the principal gentlemen of property, rank, and talent in the West Riding of this county. Resolutions were then passed wholly condemnatory of that measure as injuriously affecting their interests, and it is notorious that the influence of that meeting, and the perfect conviction it impressed on the public mind, were the means of defeating the bill; and from that time to the present, a period of not less than 17 years, the attempt has not been repeated.

It is quite true that then, as on the present occasion, the solicitors of the West Riding (one in particular) performed their duty in the first instance by exposing the mischiefs which the bill threatened; and they obtained then, as they have now, the abuse of persons who consider it quite unnecessary to support their assertions by the slightest particle of proof.

It will be admitted that a bill of more serious import to the landed community, indeed to the public generally, and requiring more careful consideration by the parties to be affected by it, has scarcely ever been submitted to parliament. It is to alter materially the practice which has existed for centuries past in the alienation of landed property in this country. Of course, the promoters must be supposed to have gravely deliberated on the new system they intended to introduce, but let us see how it stands at this moment.

In the Report of the Commissioners, (Lord Beaumont being one of them,) it is stated, that for the purpose of enabling a purchaser to ascertain from the register all the interests by which the possession of land may be affected, "it is only by the application of a public map to registration that any hope can be entertained of this result." This map and the supplemental maps were accordingly made the very essence of the bill, when introduced; and the whole machinery for carrying out the registration of all conveyances was based upon them. We now learn that this vital ingredient in the bill has been abandoned, and another bill (it can have no principle in common with the former one) is now attempted to be hurried forward, with the greatest anxiety on the part of the promoters, on the merits of which the parties to be affected by it, and particularly the smaller owners of freeholds, who will be most materially affected by it, have not had any opportunity to form an opinion.

On examining the Report of the Committee in 1830, (Lord Campbell's name being one of those appended to it,) I find that the plan was to be adapted to district as well as to Metropolitan registration; but, on the present occasion, the question appears to be narrowed to the simple alternative of metropolitan registration or no registration whatever; and the public have been judiciously (I might say judiciously) warned, by very high authority, against any opinion which may be expressed by solicitors in favour of district registration,—*that it can proceed only from their desire to obtain office.*

Differences of opinion may and do exist as to the necessity of any registration whatever, and it would not be within the compass of a letter to discuss so important a question. I shall, therefore, only remark, that if obtaining office be the great object of solicitors, they have been heretofore singularly unfortunate in the West Riding of Yorkshire; for, so far back as I can trace, a solicitor has never been appointed to the office of registrar or deputy registrar; nor can I recollect that any solicitor ever appeared as a candidate.

The county of York has been so far satisfied with the existing system of registration,—it is admitted to be capable of improvements, and these can be easily made, but no petition, that I ever heard of, has been presented against it. Yet, without any public expression of opinion in favour of a metropolitan registration, or rather in opposition to all opinions that have

been publicly expressed in this country on the subject, our registration offices are to be swept away, and a new system is to be introduced which, manifestly from the changes already made in it, is not understood, even by those who are most forward in promoting it.

A SOLICITOR.

Leeds, 4th June, 1851.

PETITION OF LANDED PROPRIETORS AGAINST A REGISTER OF DEEDS.

THE Freeholders and other Landed Proprietors resident in the Town and County of Northampton have presented a Petition to Parliament, containing the following statements:—

That the bill now brought into your honourable House for establishing a general Registry of Deeds and Instruments affecting Real Property in England and Wales, is, in the opinion of your petitioners, not only wholly uncalled for and unnecessary, but would greatly increase the expense and difficulties incident to transactions relating to real property, and with reference to estates of small value would be most oppressive, and attended with expenses which will more than counterbalance the benefit of recent legislation.

That your petitioners conceive that the most ruinous consequences would follow the publicity which would be given to every man's title, and to his mortgages, incumbrances, and private affairs by the proposed mode of registration, and that a ready opportunity would be afforded to unprincipled adventurers to search for defects in titles, and by entering caveats or otherwise delay the completion of and increase the expense attendant upon purchases, and would also encourage frivolous and vexatious claims, and thereby harass the landowner with expensive litigation.

That the proposed alteration of the law would preclude possessors of real property from obtaining money upon a simple deposit of title deeds without great delay and expense, and consequently be very prejudicial to persons requiring loans or wishing to effect immediate sales on emergencies. That every such loan or deposit, when once entered on the register, would become a part of the title, which would thereby be considerably lengthened, and an additional expense be created in investigating the same at a future period.

That registration would produce great evils is now shown in transfers of copyhold property where additional surrenders by way of mortgage are entered on the rolls of the Court, and afterwards discharged without satisfaction being also entered thereon, whereby great expense and trouble are incurred in all future dealings with the property; and it is often difficult and sometimes impracticable to prove the payment.

That it is the privilege of the English freeholder that he is not compellable to expose his title deeds, yet by the proposed bill, owners of

real property will be deprived of the satisfaction of retaining their own deeds, which will be placed in the hands of government, who will therefore have in its keeping the details of every man's title. And that persons who are accustomed to place out their money on mortgage will object to do so without the immediate possession of the title deeds.

That the proposed measure would necessarily expose all the evidence of title to casualty by fire and other damages, and at any time of popular commotion, the destruction of the Register Office might, and probably would, ensue, and thus prove a source of the most disastrous consequences; indeed, the mere possession of the building by a mob, or any other illegal power, would create the greatest alarm throughout the kingdom.

That your petitioners are of opinion that no measure of registration will secure any advantage to the public commensurate with the expense, delay, litigation, exposure of title, and other serious evils not herein enumerated, and which would necessarily be entailed, not only upon the landed, but also upon the commercial interests of the kingdom.

Your petitioners, therefore, humbly pray your honourable House, that the said bill may not be passed into a law.

CHARITABLE INSTITUTIONS' NOTICES BILL.

GREAT inconvenience has been occasioned to hospitals and other charitable institutions in England, by reason that courts, boards, and meetings of governors, members, or subscribers, and elections of presidents, patrons, treasurers, masters, physicians, surgeons, and other officers of or to such institutions respectively, have from time to time taken place, of which the notices or some of them have been issued through the post, by the extreme difficulty of proving the service of such notices, and by the want of sufficient provisions in the charters, statutes, laws, or rules of such institutions as to the service of notices thereby required to be given. And it being expedient immediately to provide a remedy for the inconvenience and defects before mentioned: It is therefore proposed to be enacted under a bill brought in by Mr. Mullings,

1. That Courts, &c. already held and not avoided, &c. be considered as held by proper notices.

2. And that future notices be sent by post, &c.

CHANCERY REFORM.

OBJECTIONS TO THE COUNTY COURT REGISTABLE JURISDICTION BILL.

THAT the large majority of cases that come before the County Courts are founded on demands from a few shillings up to £2, and others to £4, which cases were formerly determined by Courts of Request, consisting of inhabitants in

the neighbourhood, assisted by an attorney as the clerk of the Court.

That it is of great importance that the poor suitors in small debt cases should have their business disposed of speedily, inasmuch as their loss of time, if detained, would frequently, if not generally, exceed the value of the matter in dispute, and render it a less evil to abandon the debt, and consequently it is of great importance that these cases which form the great bulk of the business of the Court, should not be delayed by the investigation of questions of difficulty or importance in which attorneys or counsel attend, and in which considerable discussion may take place.

That although, where the County Courts are held in large towns, and the judge does not go on circuit from town to town, different days might be fixed for various classes of business, yet such course would be impracticable on circuits, including numerous small towns.

But the usual and ordinary business before a County Court being confined to debts and demands, and to questions of common law arising thereon; the present judges have been for the most part selected from the Common Law Bar.

That the proposed equitable jurisdiction will involve causes of great importance depending on the application of principles of equity, and involving the administration of estates and the investigation of complicated transactions.

That many important questions arise on the point of debts, by persons claiming to be creditors of testators or intestates—that inquiries become necessary on claims affecting the estate, and various claims to priority of incumbrance must be adjudicated, requiring the examination of witnesses and the discussion of the rules of equity.

That the Masters in Chancery and the practitioners in London are familiar with the investigation of such questions, and are enabled to conduct them with greater facility, and at less expense than in the country.

That if such investigation should take place in the large towns, the expense of the suitors in attending by their own solicitors, residents in their several localities, or by agents in the town where the Court is held, the expense would be greater than when conducted in London.

That in most suits in equity the parties, plaintiff and defendants, are very numerous and reside in various and often distant places; and consequently the transactions of the business in London can be conducted more advantageously and at less expense than elsewhere.

That whilst witnesses of the facts examined in the country by commission, or brought up to London before the examiners, it may be desirable to take such evidence before the County Court judges; and instead of such examination being conducted on written interrogatories, the judge should be authorized to conduct the examination *in person*, the questions being suggested by the attorneys of the respective parties.

NOTICES OF NEW BOOKS.

Report of the case of The Queen against The Commissioners of Land Tax for the Division of Bradley Haverstoe, in the County of Lincoln, with Observations. By SAMUEL MILLER, Esq., Barrister-at-Law. London: Sweet. Pp. 27.

THIS Report comprises all the affidavits and documents which were brought before the Court of Queen's Bench, on the rule calling on the Commissioners of Land Tax to show cause why a mandamus should not issue to cause the proportion of land tax to be equally assessed. Mr. Miller is unwearied in pursuing this important subject, and the present publication will usefully assist the parties engaged in other districts in obtaining redress. We agree with Mr. Miller, that the government, having now judicial authority for an equalization of the Land Tax, should introduce some general measure for putting it upon a fair and equitable footing.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ANNUAL REPORT.

IN resuming our extracts from the Annual Report of this Society, we select the following relating to "Practice and Etiquette" and "Professional Conduct."

"The Committee have, from time to time, as in former years, had submitted to them, from various parts of the country, questions of professional duty or etiquette; and upon such occasions, they have communicated to their correspondents the opinion at which they have arrived, after a discussion of the matter. Such intercourse as this has a double advantage; it forms a sort of friendly arbitration, by which questions may be disposed of with satisfaction to all parties, which might otherwise lead to unkind feelings, and injurious divisions within the ranks of the profession; it also tends to introduce a uniformity of practice throughout the country.

"One of the most important objects, undoubtedly, for which the members of the profession can unite together, is the exercise of that vigilant guard over the character and tone of professional conduct, which the confidential nature of the relation between solicitors and their clients renders so peculiarly important, at the same time that it makes an unfaithful discharge of professional duty peculiarly easy, and, frequently, extremely difficult of detection. The investigation and punishment of cases of mal-practice is extensive in proportion to, and in consequence of, its importance and its difficulty, and, accordingly, every Law Association that has been formed has found it a stumbling-block in

thereafter duly prosecuted, every such decision or order shall be final."

Daniel in support; Swanston and W. W. Cooper, contra, contended the appeal was too late.

The Vice-Chancellor held that the appeal was in time, and that the Commissioner had jurisdiction to hear the petition to annul, and that as it appeared there was no petitioning creditors' debt, the adjudication must be annulled with costs.

May 27.—*Hutchins v. Hutchins*—Judgment on further directions.

Vice-Chancellor Lord Cranworth.

In re Imperial Bank of England, *ex parte Woolley*. May 1, 1851.

WINDING-UP ACT.—CONTRIBUTORY.—EXECUTOR.—SIGNATURE OF SUBSCRIBERS' AGREEMENT.

G. W. and his son, J. W., applied for shares in a banking co-partnership, and the former received an allotment of 40 and the latter of 15 shares, and a deposit of 1s. per share was paid. G. W. afterwards agreed to take his son's shares and repaid him the 15s. and signed the scrip certificates and subscribers' agreement in his own name and in his son's name, and paid the deposits and received the dividends on the whole. Upon his death, J. W., as executor, executed a transfer of the whole 55 shares, but it was inoperative, no notice having been given thereof to the directors.

Held, upon a reference for winding up, that J. W. was not liable as a contributory in respect of the 15 shares, and the Master's decision excluding him from the list was confirmed.

MR. GEORGE WOOLLEY and his son, Mr. James Woolley, had applied for and obtained allotments of shares in this company, but the former, to whom 40 shares had been allotted, agreed to take also his son's 15 shares, on which the deposit of 1s. per share had been paid to the bank. Mr. James Woolley accordingly repaid the 15s. and signed the scrip certificates, as also the subscribers' agreement, in his own and his son's name, and paid the deposits and received the dividends on all the shares. Upon his father's death, in 1838, Mr. James Woolley was appointed executor, and transferred in that capacity the 55 shares, but the transfer, from want of notice to the directors, was inoperative. Master Farrer having, upon a reference to wind up the company, held that Mr. James Woolley was not liable as a contributory for the 15 shares, this appeal was presented.

Bacon and J. V. Prior, for the official manager, in support; Bethell, Selwyn, and Daniel, contra, were not called on.

The Vice-Chancellor said, that as it appeared the father, Mr. George Woolley, had dealt with the whole of the shares as the owner, and had

signed the subscribers' deed for his son, who had never executed it, the latter was not liable as a contributory and the appeal must be dismissed.

May 27.—*Beman v. Rufford*—Part heard.

Vice-Chancellor Turner.

North Staffordshire Railway Company v. Whieldon. May 3, 5, 6, 1851.

RAILWAY COMPANY.—COMPENSATION FOR LOWERING TURNPIKE ROAD.—WHETHER INCLUDED IN FORMER AWARD.

An agreement of reference to arbitration of the compensation to be paid for certain lands belonging to the defendants required for the purposes of the plaintiffs' railway, provided that it should include compensation for severance or otherwise, and also all compensation for damage to be sustained by the railway passing by the mansion house, but it was agreed that the power of the arbitrator should not include the value of the rights and interests of the tenant of the Grove House, nor any damage to be occasioned to the adjoining lands in the execution of the works. The railway company having lowered a turnpike road leading to the defendants' lands, held, that the compensation to be paid in respect thereof was not included in the amount awarded under the agreement.

UPON the plaintiffs requiring certain lands, forming part of the Fenton Grove Estate, Warwickshire, and belonging to the defendants, for the purposes of their railway, an agreement was entered into in September, 1846, between the parties by which the amount to be paid for the same was referred to arbitration, to include all damages by way of compensation for severance or otherwise, and also for damage to be sustained by the railway passing by Fenton Hall, and it was also agreed, that the power of the arbitrator should not include the value of the rights and interests of the tenant of Fenton Grove House, nor any damage to be occasioned to the adjoining lands in the execution of the works of the railway. The company paid the sum awarded of 10,500*l.*, and proceeded to form their railway, but having lowered a turnpike road leading to the defendants' lands, the defendants claimed 800*l.* for damages sustained thereby, and proceeded under the 8 Vict. c. 18, s. 66, to assess the amount of compensation, and upon the jury awarding 500*l.* for the damages, and 15*l.* for the temporary occupation of the road, the defendants brought their action to recover the amount, whereupon the plaintiffs paid the money into Court and filed this bill, execution being stayed.

Males and Bovill, for the plaintiffs, contended, that the sum awarded included the whole of the damages sustained; Bacon and Campbell, for the defendants.

The Vice-Chancellor, after taking time to consider, held that the damage arising from the lowering of the turnpike road was not

covered in the former compensation awarded, and dismissed the bill with costs.

May 27.—*Attorney-General v. Bishop of Worcester*—Part heard.

Court of Queen's Bench.

Regina v. Dale. May 7, 1851.

SCI. FA. TO ENFORCE BAIL.—DEMURRER.—ONE OF JUSTICES DESCRIBED BY INITIALS.

A demurrer was overruled to a sci. fa. to enforce a recognisance of bail, on the ground that one of the justices before whom the recognisance had been entered into was described as "J. H. Harper."

THIS was a demurrer to a sci. fa. to enforce a recognisance of bail which had been entered into before Mr. Lee Townsend and Mr. J. H. Harper, two of her Majesty's justices of the peace, on the ground that one of the justices' names was not set out in full, but only with the initials.

Case in support; Coson, contra, was not called on.

The Court said, that the cases, to which reference had been made at bar, in which it had been held ground of demurrer to declarations on bills of exchange in which the name was set out with initials only, did not apply in criminal proceedings, and overruled the demurrer. Judgment for the Crown.

Blowers v. Rackman. May 14, 1851.

COUNTY COURTS' EXTENSION ACT.—APPEAL.—DEBT UNDER 20L.

An appeal under the 13 & 14 Vict. c. 61, s. 14, from the decision of a County Court judge holding that a bankrupt's certificate which he had obtained prior to the judgment against him in the County Court, did not protect him from such judgment, was dismissed, the amount of the debt for which the judgment was recovered being under 20L.

THIS was a plaint in the Norfolk County Court, held at Great Yarmouth, against the defendant who had obtained his certificate in bankruptcy prior to the judgment of the Court, and it was therefore contended was protected therefrom. The judge, however, having decided that such certificate was no protection, the appeal was presented against his decision.

Brammell in support; *Willis*, contra, on the ground that the amount for which the defendant had been sued was under 20L, citing the 13 & 14 Vict. c. 61, s. 14, which enacts, that "if either party in any cause of the amount to which jurisdiction is given to the County Courts by this act shall be dissatisfied with the determination or decision of the said Court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any of the Superior Courts of Common Law at Westminster." The Court said, that under the 13 & 14 Vict.

c. 61, s. 14, the objection must prevail, and dismissed the appeal.

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Held, on motion for and refusing a rule for a new trial, upon the ground of misdirection, of an action brought against a County Court judge for false imprisonment by the plaintiff, who had been committed under his order for nonpayment of an instalment, notwithstanding he had obtained a discharge from the Insolvent Debtors' Court, the debt in question being included in his schedule, and the judge having disregarded a prohibition from the Court of Chancery, that the judge was entitled to notice of action under the 9 & 10 Vict. c. 95, s. 138, inasmuch as he had proceeded with the cause honestly and bona fide believing that he was called upon to do so, and therefore acting in pursuance of the statute.

THIS was a motion for a new trial, on the ground of misdirection, of this action, which was brought against the defendant as Judge of the Southwark County Court, to recover damages sustained by the plaintiff for his false imprisonment under the defendant's order of commitment. It appeared the plaintiff had been ordered to pay the amount of debt for which he had been sued in the Court by instalments, and had been committed upon nonpayment of one instalment, whereupon he petitioned the Insolvent Debtors' Court, inserting the debt in his schedule and obtained his discharge. Subsequently he was summoned for nonpayment of another instalment, and, notwithstanding his order of discharge, was again committed, and the plaintiff then obtained a writ of prohibition out of Chancery to stay the proceedings, and an order for the plaintiff's commitment having been nevertheless made, this action was brought, to which the defendant pleaded that he had no notice of action, the grievances complained of being committed after the passing of and in pursuance of the County Courts' Act. The plaintiff replied denying that the grievances were committed in pursuance of the act; but, on the trial, the Lord Chief Justice directed the jury that if the defendant had acted reasonably and bona fide in the belief that he was doing right, he was acting in pursuance of the statute, and the defendant obtained a verdict.

By s. 138 of the 9 & 10 Vict. c. 95, it is enacted, that "all actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be tried and tried in the county where the fact was com-

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Makins and *Bosill*, for the plaintiffs, contended, that the sum awarded included the whole of the damages sustained; *Bacon* and *Campbell*, for the defendants.

The Vice-Chancellor, after taking time to consider, held that the damage arising from the lowering of the turnpike road was not

covered in the former compensation awarded, and dismissed the bill with costs.

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Court of Queen's Bench.

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Code in support; *Coson*, contra, was not called on.

The Court said, that the cases, to which reference had been made at bar, in which it had been held ground of demurrer to declarations on bills of exchange in which the name was set out with initials only, did not apply in criminal proceedings, and overruled the demurrer. Judgment for the Crown.

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—DEBT UNDER 20L.

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Brannell in support; *Willis*, contra, on the ground that the amount for which the defendant had been sued was under 20l., citing the 13 & 14 Vict. c. 61, s. 14, which enacts, that "if either party in any cause of the amount to which jurisdiction is given to the County Courts by this act shall be dissatisfied with the determination or decision of the said Court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any of the Superior Courts of Common Law at Westminster."

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Held, on motion for and refusing a rule for a new trial, upon the ground of misdirection, of an action brought against a County Court judge for false imprisonment by the plaintiff, who had been committed under his order for nonpayment of an instalment, notwithstanding he had obtained a discharge from the Insolvent Debtors' Court, the debt in question being included in his schedule, and the judge having disregarded a prohibition from the Court of Chancery, that the judge was entitled to notice of action under the 9 & 10 Vict. c. 95, s. 138, inasmuch as he had proceeded with the cause honestly and bona fide believing that he was called upon to do so, and therefore acting in pursuance of the statute.

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By s. 138 of the 9 & 10 Vict. c. 95, it is enacted, that "all actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be tried and tried in the county where the fact was com-

May 28.—*Allen v. North-Western Railway Company*—Order on petition for payment of fund out of Court which had been paid in to pay for lands required for the purposes of their railway.

— 29.—*Rowley v. Adams*—Cur. ad. vult.

— 29.—*Blenkinsopp v. Blenkinsopp*—Order on petition for reference as to cutting timber, &c., to provide for payment of alimony.

— 30.—*Gooch v. Gooch and others*—Cur. ad. vult.

— 29, June 2.—*Turner v. Turner*—Motion for discharge of order for rehearing of petition granted.

June 2.—*Mackeson v. Pope*—Judgment on fur. dirs. and costs.

— 2.—*Attorney-General v. Corporation of Louth*—Leave to give short notice of motion for reference on information as to extension of grammar school.

— 3.—*Massey v. Carvick*—Bill dismissed with costs against defendant Carvick, and without costs as to other parties.

— 3.—*Bell v. Jones*—Bill for specific performance dismissed with costs.

— 3.—*Betts v. Barrow*—Part heard.

Vice-Chancellor Knight Bruce.

Harvey v. Palmer. May 5, 1851.

WILL.—BEQUEST.—WHETHER SUBJECT TO DEBT DUE TO TESTATOR.

*A testator by his will bequeathed to his son a leasehold house entirely free from any claim, charge, demand, or lien, of the son's creditors, and it appeared that the son was indebted to his father in a sum of 900*l.* Held, on a claim filed by the son's assignees against the executors that the bequest was intended not to be subject to the debt.*

THIS was a claim filed under the Orders of April, 1850, on behalf of the assignees of a legatee against the executors. The testator, by his will, gave a leasehold house to the legatee, his son, free from "any claim, charge, demand, or lien" of his son's creditors, and it appeared the son was indebted in the sum of 900*l.* to the testator.

Russell and C. Hall in support, contended that the testator intended the bequest to be free from the debt.

Mahns and Bird for the executors, contra.

The Vice-Chancellor held, that the bequest was not subject to the debt, and decreed accordingly for the plaintiffs.

May 28.—*Ex parte Sturgis, in re Hemsworth*—Petition for payment of allowance to provisional assignee of Insolvent Debtors' Court, under 12 & 13 Vict. c. 106, for benefit of creditors to stand over, the money to be impounded.

— 28.—*Henning v. Mayo*—Part heard.

— 28.—*In re Heath and others*—Three-fifths of creditors of arranging debtors, under 12 & 13 Vict. c. 106, s. 216, held not exclusively to be composed of creditors of arranging

debtors, but in part of creditors of them with their former partner.

— 30.—*Attorney-General v. Johnson*—Order on information relating to charity.

— 30.—*Habersham v. Vardon*—Judgment on construction of will.

June 2.—*Marshall v. Sladden*—Judgment on exceptions and fur. dirs.

— 2, 3.—*Gibbons v. Fletcher and others*—Accounts directed of rates from bill filed and of money due on mortgages thereof.

— 3.—*Jones v. Price*—Part heard.

Vice-Chancellor Lord Cranworth.

In re Imperial Bank of England, ex parte Aspinall. May 1, 1851.

WINDING-UP ACTS.—CONTRIBUTORIES.—PAYMENT OF DEPOSIT.

*A. took shares in a banking company and paid the deposit of 1*s.* per share in 1836, having never signed the subscribers' agreement, nor received any dividends nor paid any calls: Held, on appeal from and confirming the decision of the Master, that he was not liable as a contributory under the Winding-up Acts.*

MR. ASPINALL, the respondent in this appeal from the Master's decision excluding his name from the list of contributories to this company, had taken shares in the company on its formation in 1836, and paid the deposit of 1*s.* per share, but it appeared he had not signed the subscribers' deed, nor ever paid any call nor received any profits.

Bacon and Prior for the official manager, in support of the appeal, which was opposed by *Bethell and Selwyn*.

The Vice-Chancellor said, that as the other shareholders had signed the deed and received the dividends, and continued to carry on the business without calling on the respondent to do more than pay the deposit, he could not now be called upon to contribute, having done no other act besides taking the shares and paying the deposit in 1836, to render himself liable as a member of the company, and it appeared, also, that the prospectus in pursuance of which the shares were taken by the respondent, had been so varied as to render the undertaking a new company altogether. The appeal was therefore dismissed.

May 28.—*In re Upfall, ex parte Direct Birmingham and Brighton Railway Company*—Order discharged of Master for call on shares held by Mr. Upfall.

— 28, 29.—*Beman v. Rufford*—Issue at law as to validity of agreement and injunction to restrain railway company from carrying into effect so much thereof as bound them to lay down rails on the narrow gauge.

June 3.—*Thornhill v. Manning*—Order for payment of sum reported due on order for foreclosure on 13th June.

— 5.—*Ex parte Vicar of Hulfas, in re Hall-*

Gas Company.—Order on petition for reference to approve of purchase by petitioner, with purchase money of vicarage lands.

Vice-Chancellor Turner.

May 28.—*In re Free School of Rugeley*.—Reference to the Master as to number to be appointed to act with surviving trustee, and to approve of proper persons to settle a scheme.

—29.—*Milne v. Milne, Same v. Same*.—Judgment in these suits.

May 30, June 2, 3.—*Attorney-General v. Bishop of Worcester and others*.—*Cur. ad. vult.*

—3.—*Wayne v. Hanham*.—Decree for foreclosure of reversionary interest.

Court of Queen's Bench:

In re William Henry Barber. June 4, 1851.

ATTORNEY.—RENEWAL OF CERTIFICATE.

Roebuck, Q. C., having moved on May 5 last for a rule nisi for the renewal of Mr. Barber's certificate, the Court took time to consider, and on this day

Lord Campbell delivered their judgment as follows:—

"We have deferred giving our opinion upon the fresh application in this case made in last Easter Term, that we should have an opportunity to peruse the additional affidavits, and to re-consider the judgment formerly pronounced by the Court in discharging the rule granted, to show cause why Mr. Barber's certificate, as an attorney, should not be renewed. Having done so very deliberately, and without regard to any technical difficulties which might have stood in the way of our giving full effect to any equitable circumstance—we are deeply concerned to be obliged to declare that we see no sufficient reason for altering the view before taken of his conduct in these transactions. I may mention that, although I had not the honour to be a member of this Court, when the former judgment was pronounced, I have several times perused that most elaborate judgment, and I entirely concur in the conclusion at which my learned brothers have arrived,—that if Mr. Barber was not directly cognizant of the frauds in the forgery cases, or some of them, it was because he must have been wilfully blind and did not choose to inquire into the character of these transactions. If such was the state of his mind when acting as Fletcher's attorney and enabling that wicked man in four successive cases to avail himself of forged wills, although he might not be a party to the forgeries, surely he is not a fit person to be permitted to practise as a solicitor. Had he been merely the dupe of Fletcher, God forbid that he should be debarred from the exercise of his profession, even if he were charged with a high degree of indiscretion and supineness; but if an attorney suspecting that his client is engaged in a systematic course of fraud and forgery, continues to act for him as if he were assisting to enforce just rights and to give effect to genuine documents, he is

guilty of gross misconduct, although not originally privy to the frauds, and although never informed of the manner in which the forged documents were obtained, and although to carry on the imposture persons may be introduced to him acting in a feigned name. The principle on which the Court proceeded cannot, therefore, be disputed, and I think that the proof supported the inference that they drew.

In the new affidavits we find no facts brought forward to alter our opinion. Fletcher's exculpation of Mr. Barber is made more distinct and prominent, but from long experience we have learned that little weight is to be given to the statements of such a convict as Fletcher, and he leaves untouched the main facts on which we consider suspicion amounting to complicity must have entered Mr. Barber's mind. Unfortunately for Mr. Barber we are greatly strengthened in the belief that a just view of his conduct was before taken by the Court from the information he has afforded us in his new affidavit as to the principles on which he acted. In commenting on one of the cases of forgery, he says, 'that the instructions given to him by the said J. Fletcher, neither in this case nor in any other case, involved or directed any deceit, misstatement, or misrepresentation, nor even any suppression of the truth on the part of this deponent, except so far as might be necessary to prevent parties from setting up unfounded claims or sustaining claims that were well founded to the prejudice of the said J. Fletcher's title to just and reasonable compensation;—denies that he ever practised any deceit or any suppression of the truth, except so far as in the exercise of what he considered to be a sound professional discretion was necessary to avoid the success of unfounded claims tending to litigation, and to secure such compensation as aforesaid to a client whose business was valuable to this deponent, and whose character and objects he had at that time no reason to distrust.'

"This remarkable passage seems to us to afford a clue to Mr. Barber's whole conduct, and confirms us in the belief that, although he might neither have contrived the forgeries nor been privy to the execution of them, he chose to be ignorant of all the particulars which it would have been inconvenient for him to know, and that he wilfully abstained from making such inquiries as a respectable attorney ought to have made, because he felt he must either have declined the business and quarrelled with Fletcher, or have become an active party to the transactions, however guilty they might have turned out. Adhering to the principle of the former decision, and finding nothing in the affidavits to induce us to vary from the conclusion on the facts which the Court have taken, we are bound to refuse the rule to show cause which was moved for by Mr. Roebuck; and we wish it to be understood that this is our final judgment, which the misconduct of the individual has drawn down upon him, and

which a due regard for the pure administration of justice has required us to pronounce. There will, therefore, be no rule.

Regina v. Pocock and others. May 7, 1851.

CORONER'S INQUISITION RETURNING VERDICT OF MANSLAUGHTER AGAINST TRUSTEES FOR NONREPAIR OF ROAD.—QUASHING.

A rule was made absolute to quash a coroner's inquisition on the body of one W. B., returning a verdict of manslaughter against the trustees of certain roads, and charging that the trustees feloniously omitted and neglected to contract for the repair of the roads, and that the trustees did feloniously kill and slay the said W. B.

THIS was a rule nisi granted on April 17th last, to quash a coroner's inquisition on the body of one William Brent, finding that the defendants were trustees of the roads in the south district of the parish of St. George the Martyr, Southwark, under an act of parliament empowering them to raise rates and enter into contracts for the repair of the roads, and that thereby the duty of repairing the roads was cast on them, but that they unmindful of their duties as such trustees, feloniously omitted and neglected to contract for the repair of the roads in the said district and feloniously omitted and neglected to repair the said roads, whereby they became ruinous, and that one William Brent was driving along the said road, and the trustees by their felonious neglect caused the wheel of his cart to go into a hole, whereby it was upset, and the said W. Brent received injuries whereof he died, and that the said trustees did "feloniously kill and slay" him.

Charnock showed cause, citing *Regina v. Barratt*, 2 O. & K. 343; *Regina v. Haines*, 2 C. & K. 368.

Watson and Hayes were not called on.

The Court said, that in order to make a party responsible for a neglect of duty, the death must ensue directly from the breach of duty, but that there was no ground for extending the criminal law to the omission of the trustees to raise a rate and enter into a contract for the repair of a road; and the rule was therefore made absolute to quash the inquisition.

Watson v. Andergate, Nottingham, and Boston Railway Company. May 14, 1851.

RAILWAY COMPANY.—LIABILITY AS COMMON CARRIERS.—LIMITATION TO EXTENT OF LINE.

On appeal from, under the 13 & 14 Vict. c. 61, s. 14, and confirming with costs, the decision of the judge of the Grantham County Court, held, that a railway company were liable as common carriers for the detention of a parcel containing plans and a model of a machine for lifting coal which had been sent by their railway, to compete

for a prize, by the plaintiff directed to C., and had been received by their agent at G., without any limitation of their liability to the extent of the line of their railway, by which detention the parcel had arrived at its destination after the prizes were awarded.

THIS was an appeal under the 13 & 14 Vict. c. 61, s. 14, against the decision of the judge of the Grantham County Court in this action, which was brought to recover from the defendants as carriers compensation for not duly delivering certain plans and model of a machine to load colliers from coal barges. It appeared that the plans and model in question were sent to Cardiff to compete with others for a prize of 100*l.* offered for a machine for lifting coals out of barges, and that on being taken to the defendants' station at Grantham, it was proposed on the plaintiff's behalf to pay the carriage through to Cardiff, but that upon their offer-keeper stating he had no rates of payment beyond Nottingham where another line of railway joined, and it would be unnecessary to send a special messenger with the goods to ensure their arrival in time, the words "paid to Nottingham" were substituted for "paid to Bristol,"—the original direction, however, remaining on the parcel. The plans, &c., having been detained at Bristol, were not delivered at Cardiff until the day after the prizes had been awarded, whereupon this action was brought. On the trial, the plaintiff called two witnesses who proved that the model was superior to the one that had gained the prize, and the judge decided for the plaintiff with 20*l.* damages.

Denison in support of the appeal, on the ground that the defendants were only liable for the carriage of the parcel to Nottingham, the extent of their line, and that the damages should have been nominal.

Lush, contra.

The Court said, the parcel had been delivered to the defendants' agent to be forwarded to Cardiff, and as at the time the extent of their liability was not limited, they must be taken to have contracted to carry it to its destination, and were clearly liable for its detention: *Muschamp v. Lancaster and Preston Junction Railway Company*, 8 M. & W. 421. And as the damages awarded did not appear to be excessive, or to have been assessed on an incorrect principle, the appeal must be dismissed with costs.

Regina v. Smith and others. June 2, 1851.

INDICTMENT.—ADMISSION OF DEPOSITIONS IN ABSENCE OF WITNESS.—WHAT EVIDENCE NECESSARY.

Held, making absolute a rule nisi for a new trial of an indictment for larceny, that the depositions of a witness taken before magistrates are not admissible in his absence, without evidence that the prisoner against whom they are to be used had kept the witness away. And where one S., a prisoner, was shown to have so procured

the absence of a witness, held, that the depositions could only be taken against him self, and not against his fellow prisoners.

THIS was a rule nisi for a new trial of this indictment, which was tried at the last Yorkshire Assizes, before Mr. Justice Cresswell, on the ground of the improper admission of the depositions taken before the magistrates of an absent witness. It appeared that the witness had been kept away by Smith, one of the prisoners, but the depositions had been used on the trial against the other two prisoners as well as Smith.

Hester showed cause, and referred to *Anon.*, Godbolt, 326; Comyn's Dig. tit. "Test-moigne," c. 4; Buller's N. P. 238, a.

Dearly in support.

The Court said, that the depositions were only admissible against Smith, who was shown to have procured his absence, but not against the other prisoners; and there was no authority for holding that such depositions were admissible without any evidence that the prisoner against whom they were used had kept such witness away, as thereby a prisoner would be prevented from having an opportunity to cross-examine a witness, and the rule therefore must be made absolute for a new trial.

May 28.—*Regina (In re De Haber v. Queen of Portugal) v. Mayor, &c., of London*—Rule absolute for prohibition.

—28.—*Regina (In re Wadsworth v. Queen of Spain) v. Mayor, &c., of London*—Rule absolute for prohibition.

—28.—*Regina (Ex parte Wright) v. Governors, &c., of the Poor of St. James, Westminster*—Rule nisi for mandamus on defendants to admit chaplain into parish workhouse to perform his duties.

—29.—*Latham v. Spedding*—Rule absolute to set aside judge's order allowing plaintiff his costs.

—29.—*Regina v. Guardians of the Poor of St. Martin's in the Fields*—Rule discharged for mandamus to proceed to election of clerk to board.

—29.—*Regina v. Cross*—Rule nisi for *quo warranto* on members of local board of health for Ely.

—30.—*Gower v. Beaumont*—Rule refused to set aside verdict for plaintiff and for new trial on the ground of misdirection.

—30.—*Berg v. Brown*—Rule nisi to set aside verdict for defendant and for new trial on the ground of verdict against evidence.

—30.—*Regina v. Justices of Newbury*—Rule nisi on defendants to issue distress warrant for paving rate, or for mandamus for same purpose.

—30.—*Regina (Ex parte Bailey) v. South Devon Railway Company*—Rule refused for mandamus on defendants to construct branch Railway.

—30.—*Dea. Wm. Palmer v. Ayre*—*Cur. ad. vult.*

—31.—*In re The Arbitration between the*

Great Western Railway Company and the inhabitants of Tisbury—Part heard.

—31.—*Regina v. Haslam and another*—*Cur. ad. vult.*

June 2.—*Regina (Ex parte Governors of St. Thomas's Hospital) v. Lord Mayor, &c., of London*—Rule nisi for mandamus on defendants to affix hospital seal to certain leases which had been approved by the governors.

—2.—*Duke of Brunswick v. Harmer*—Rule nisi for taxation of costs of first trial.

—2.—*Regina v. Lancashire and Yorkshire Railway Company*—Rule nisi for mandamus on defendants to construct branch railway.

—2.—*Regina v. York, Newcastle, and Berwick Railway Company*—Rule absolute for mandamus on defendants to construct branch railway.

—2.—*Regina (Ex parte Alder) v. Amas*—Rule nisi for criminal information against defendant for corrupt and oppressive conduct as Judge of Marylebone County Court.

—3.—*Booth v. Monmouthshire Railway and Canal Company*—On demurrer to declaration, judgment for plaintiff.

—3.—*Sims and others v. Marryat*—Part heard.

Queen's Bench Practice Court.

May 27, 28.—*In re South Devon Railway Company*—Rule refused for mandamus, with leave to apply to the full Court.

—28.—*Regina v. Faine and another*—Rule nisi for criminal information for libel.

—29.—*Hansell v. Hoskin*—Rule nisi on plaintiff for stay of proceedings herein.

—29.—*Regina v. Alleyns and others*—Rule for writ *certiorari* to remove indictment for conspiracy into this Court.

—30.—*Beauchere v. Hook*—Rule nisi for writ of error to reverse outlawry.

—30.—*Regina v. Eastern Union Railway Company*—Rule nisi to set aside award, or for reference back to arbitrator.

—30.—*In re Cohen*—Rule nisi refused to set aside order of justices.

—31.—*Regina v. Sage*—Rule nisi for mandamus on defendant to admit clergyman to office of chaplain of parish church of Sheffield.

—31.—*Duke of Brunswick v. Harmer*—Rule refused on plaintiff to pay costs of first trial, with leave to apply to full Court.

June 2.—*Regina v. Great Northern Railway Company*—Rule nisi for mandamus on defendants to make road.

—2.—*Regina v. Justices of Kent and the South Eastern Railway Company*—Rule nisi on justices to adjudicate on information under § Vict. c. 20, s. 57.

May 29, June 3.—*Regina v. Vestry of St. Mary's, Islington*—Rule nisi for mandamus on defendant to pay over interest on certain debentures.

—3.—*Regina v. Judge of Brompton County Court*—Rule nisi for mandamus on defendant to adjudicate in plaint.

—3.—*Ex parte Hulst*—Part heard.

Court of Common Pleas.

Ratt v. Parkinson and another. May 5, 1851.

JUSTICES' WARRANT FOR CHURCH-RATE.—SERVICE OF MINUTE OF ORDER.—ILLEGAL DISTRESS.

Held, discharging a rule to set aside a nonsuit in an action brought against justices for an illegal distress under a warrant for a church-rate issued upon an order which had been formally drawn up two days after the service of a minute of an order to pay such rate on the day following judgment was pronounced against the plaintiff, that such minute was sufficient to justify the order afterwards formally drawn up under the 11 & 12 Vict. c. 43, ss. 14, 17.

THIS was a rule nisi, granted on the 17th of April last, upon leave reserved to set aside the nonsuit and enter a verdict for the plaintiff with 8*l.* damages in this action which was brought against the defendants, two magistrates of the county of Buckingham to recover damages for an illegal distress. It appeared that the plaintiff had been required to pay a church-rate to which he was rated, and had been, on his default, summoned before the defendants; but, at the request of the plaintiff's attorney, the matter was adjourned until May 6, when judgment was given and a minute served on the plaintiff the following day of an order on him to pay the rate, and a formal order drawn up two days after, under which a warrant was issued and signed by the defendants, under which the plaintiff's cart had been seized. By the 11 & 12 Vict. c. 43, s. 14, it is enacted, that "the said justice or justices" "shall consider the whole matter, and determine the same, and shall convict or make an order upon the defendant;" "and if he or they convict or make an order against the defendant, a minute or memorandum thereof shall then be made;" "and the conviction or order shall afterwards be drawn up by the said justice or justices in proper form, under his or their hand and seal or hands and seals."

And by s. 17, that "in all cases where by any act of parliament authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying any order of a justice or justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress."

D. D. Keane and Power showed cause against the rule; Byles, S. L., O'Malley, and Worledge in support, on the ground that no formal order had been drawn up under the hands and seals of the magistrates and served upon the plaintiff, and that therefore the warrant founded thereon was irregular, and the distress levied under it illegal.

The Court, however, held, that it was sufficient to pronounce the judgment in parol and draw up a minute of the judgment, and that

the minute would justify the order afterwards made bearing the same date as the minute; and the defendants were protected under s. 1; and the rule must be discharged.

May 28.—*Wilson v. Franklyn*—Rule absolute for prohibition to Shropshire County Court held at Wem.

—28.—*Dewes v. Riley*—Cur. ad. vult.

—29.—*James v. Whitebread and others*—Rule absolute for new trial.

—30.—*Leachman v. Manser*—Rule absolute to enter verdict for plaintiff.

—30.—*Rosetto and others v. Gurney*—Rule absolute for new trial.

—30.—*Stainbank and others v. Fenning and another*—Rule absolute to enter verdict for defendants.

—30.—*Doe dem. Hopkinson and others v. Ferrand*—On special case, judgment for defendant.

—30.—*Doe dem. Starling v. Starling*—On special case, judgment for plaintiff.

—31.—*Lambert v. Smith*—Rule nisi to enter verdict for defendant on 2nd issue, pursuant to leave reserved.

June 2.—*Shelton v. Spingett*—Rule nisi to enter nonsuit, or for new trial, on the ground of verdict being against evidence.

—2.—*Anon.*—Rule nisi on attorney to pay over money admitted to be payable, and for taxation of his bill of costs.

—2.—*Marshall v. York, Newcastle and Berwick Railway Company*—Rule nisi for attachment against witness for not appearing in obedience to subpoena herein.

—2.—*West London Railway Co. v. London and North Western Railway Co.*—Part heard.

—3.—*Croft v. Beales*—Cur. ad. vult.

Court of Exchequer.

Graham and others v. Isomonger. May 27, 1851.

INDEBITATUS ASSUMPSIT. — SPECIAL CONTRACT. — INSURANCE BROKERS. — PAYMENT OF PREMIUMS.

To an action in indebitatus assumpsit brought by the assignees of a bankrupt insurance company, to recover from insurance brokers the amount of premiums due on insurances effected with the company in the year 1848, the defendant pleaded non assumpsit, and on the trial proved a special arrangement, whereby the premiums for all insurances in each year were not to be paid till the 1st of April, and the defendants were to be allowed for all losses in the yearly accounts, which were to be adjusted on the 31st of December, and it appeared the losses in 1848 exceeded the premiums due: Held, that the plaintiffs could not recover in the action, and a rule nisi to enter the verdict for the plaintiff or for a new trial was by consent discharged and a nonsuit entered.

THIS was a rule nisi granted on January 15 last, to enter the verdict for the plaintiffs, or for a new trial, in this action, which was brought in *indebitatus assumpsit* by the assign-

ness of a bankrupt insurance company to recover the amount of premiums on certain insurances effected in 1848 by the defendants, who were insurance brokers, with the company. The defendants pleaded *non assumpsit*. It appeared on the trial, before L. C. B. Pollock, that the defendants had done business to the extent claimed, but that there was a special arrangement between the parties under which the premiums for all insurances in each year were not payable until April 1, and the defendants were to be allowed for losses in the yearly accounts, which were to be adjusted on December 31, and that in the year 1848 the losses exceeded the premiums payable. The jury having, under the direction of the learned baron, found a verdict for the defendants, this rule had been obtained on the ground of misdirection.

O'Malley and *Ball* now showed cause against the rule, which was supported by *Crowder* and *Unthank*.

The Court said, that as the jury had found the special contract relied on by the defendants, and the question was one for them under the plea of *non assumpsit*, the rule must be discharged.

Upon the suggestion, however, of the Court, the rule was, with the consent of the defendant's counsel, made absolute to enter a nonsuit, in order to give the plaintiffs, as they appeared to have acted under some misapprehension, another opportunity of trying the case.

May 28.—*Graham and others v. Mason*—Rule absolute.

— 28.—*Barminster v. Norris*—Cur. ad. vult.

— 29.—*Jeakes and another v. White*—Cur. ad. vult.

— 29.—*Smith v. Stevens and another*—Rule discharged to set aside verdict and for new trial.

— 30.—*Frost v. Parker*—Rule nisi for new trial.

— 30.—*Read v. Legard*—Rule discharged to enter nonsuit on the ground of misdirection.

— 31.—*Hudson v. Roberts*—Cur. ad. vult.

June 2.—*Micklethwaite v. Winter*—On special case, judgment for plaintiff.

— 2.—*Mehew v. Bone*—Case framed under order of Nisi Prius directed to be sent down for new trial, or for *stet processus*.

June 3.—*White and another, assignees, v. Mallett*—Rule discharged to set aside verdict for plaintiffs and for new trial.

Court of Exchequer Chamber.

Regina v. Clements and another. May 3, 1851.

DEPOSITIONS TAKEN UNDER 11 & 12 VICT. C. 42.—WITNESS UNABLE TO ATTEND THROUGH ILL HEALTH.—READING BEFORE GRAND JURY.

Held, that under the 11 & 12 Vict. c. 42, s. 17, the depositions taken under that section may be used before the grand jury as well as before the petty jury, where the witness is unable to attend through illness.

THIS was a point reserved for the opinion of the Court, whether, under the 11 & 12 Vict. c. 42, s. 17, where a witness was unable to attend through illness, his deposition might be made use of before the grand jury.

By the 11 & 12 Vict. c. 42, s. 17, it is enacted, after providing for the examination of witnesses, and that justices are to administer oath or affirmation, that "if upon the trial of the person so accused as first aforesaid it shall be proved, by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid is dead, or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross examining the witness, then, if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof."

The Court said, that they entertained considerable doubt whether the question could properly be adjudicated under the authority constituting the Court, and also, whether such an objection was sufficient to invalidate a conviction; but that, as their opinion had been asked upon the construction of the act of parliament, they were of opinion the deposition might be used before the grand as well as before the petty jury, and that the conviction should therefore be affirmed.

June 3.—*Kinning v. Buchanan*—Decision of Court below reversed and *venire de novo*.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Bankruptcy and Insolvency.

ACT OF BANKRUPTCY.

1. *Allowing goods to be taken in execution.*—*Relation*.—An act of bankruptcy, under stat. 6 Geo. 4, c. 16, s. 3, by procuring the party's own goods to be taken in execution is not committed until the actual seizure. And, upon such seizure, the commission of the act of bankruptcy is not carried back by relation to any earlier period. *Belcher v. Gremmow*, 9 Q. B. 873.

Cases cited in the judgment: *Gibson v. King Carr. & Marsh*, 458, 462; *Higgins v. M'Adam* 2 Y. & J. 1, 10.

2. *Notice*.—An intimation given by a clerk of a defendant's attorney, to a clerk of the plaintiff's attorney, that the defendant has committed an act of bankruptcy—the clerk to whom it is given not being shown to be a managing clerk, or to have communicated the matter to his principal,—is not such a notice as will defeat an execution, under the proviso in the 2 & 3 Vict. c. 29, s. 1.

Quere, whether a notice to one who is shown to be a managing clerk, would suffice? *Pennell v. Stephens*, 7 C. B. 987. See *Notice*.

ADJUDICATION.

Warrant.—Insolvent Act.—Justification to gaoler.—Return to habeas corpus.—A warrant of the Insolvent Court, dated the 8th of April, 1850, under 1 & 2 Vict. c. 110, ordering that a prisoner "shall be discharged" "forthwith, as to the detainer of" *S.*, and "as to the detainer of" *H.*, "at the period of three calendar months" "from the 7th of Jan. 1850,"—the date of the vesting order,—is a sufficient authority to the keeper of the prison for his discharge forthwith; and is an answer to an action for not bringing up the prisoner under a *habeas corpus ad satisfaciendum*, delivered to the keeper before, but returnable after such discharge, although returnable within three months from the date of the adjudication and warrant.

The keeper in such action may plead not guilty by statute, and give the warrant in evidence under that plea.

Quere, whether an adjudication of the Insolvent Court in the same form is good. *Hurvey v. Hudson*, 1 L. M. & P. 660.

Case cited in the judgment: *Thomas v. Hudson*, 2 D. & L. 873; 14 M. & W. 353; 16 M. & W. 885.

AFFIDAVIT FILED BY CREDITOR.

What sufficient to be stated.—Costs of action.—In an affidavit filed by a creditor, under stat. 5 & 6 Vict. c. 122, s. 11, to bring a debtor before the Court of Bankruptcy, *Quere*, whether it be sufficient, in every case, to state the items of demand on the creditor's side, or whether, if there be cross claims, he is bound to state also the amount for which he gives credit, *Semble*, per Lord Denman, C. J., and *Patteson, J.*, that he is. *Semble*, per *Erie, J.*, contra.

But, if the creditor, in his affidavit, and in an action referred to by such affidavit and annexed to it, and served upon the debtor, states the total of his claim as 100*l.*, and the account specifies all the items of charge, which are summed up, and amount to 100*l.*, and credit is then given for a gross sum of 11*l.*, which, at the foot of the account is subtracted from the 100*l.*, and the balance, by mistake, set down at 99*l.*: *Held*, that if the creditor afterwards brings an action and recovers less than 99*l.*, the debtor is not therefore entitled to his costs under stat. 5 & 6 Vict. c. 122, s. 19. For the affidavit must be taken as, substantially, alleging a claim of 89*l.* only. *Willding v. Temperley*, 11 Q. B. 987. See *Costs*.

ARRANGEMENT.

1. *Notice.—"Month."*—*Judgment non obstante veredicto.*—The 22th section of the Bankruptcy Law Consolidation Act (12 & 13 Vict. c. 106), enacts, that every deed of arrangement entered into by a trader with six-sevenths of his creditors, shall be binding on all his creditors; and the 22th provides that no such deed shall be binding on any non-executing creditor, "until after the

expiration of three," ("calendar," see sect. 276) "months from the time at which such creditor shall have had notice from such trader" of the deed.

To a declaration upon a bill of exchange, the defendants pleaded in bar of the whole action, that after the bill became due, a deed of arrangement was entered into between them and six-sevenths of their creditors, under the 22th section; that the plaintiff, to wit, on the 1st of Nov. 1847, had notice from them of the deed, and that three months had elapsed from the notice before the commencement of the suit.

Held, upon motion for judgment *non obstante veredicto*, that the plea was bad, for not stating that the notice was given after the act came into operation.

Quere, whether it was not also bad for not stating that such notice had been given 3 calendar months, &c. *Marsh v. Higgins*, 1 L. M. & P. 253.

2. Statement of debt in account.—Costs.—

Form of proposal and assent of creditors.—After issue joined and before trial, defendant, a trader, petitioned the Court of Bankruptcy for protection, under the 12 & 13 Vict. c. 106, s. 211. At the time when he filed his account the cause had been tried, and a verdict found against him for 22*l.*, but judgment had not been signed. He described the debt in his account as "*W. S.* Disputed, estimated at 50*l.*, has got judgment for 22*l.* and costs." The proposal made by the defendant at the first private sitting was to pay "7*s.* 6*d.* in the pound," "with a satisfactory guarantee for the due payment of the same." The assent at the second private sitting was "to accept 7*s.* 6*d.* in the pound upon the amount of our respective claims," &c., "the amount being guaranteed by" *S. S.* and *H. S.* The defendant obtained a protection from arrest; but having been subsequently taken upon a *ca. sa.* founded upon the judgment in the above action:

Held, upon motion for his discharge from custody, first, the debt was sufficiently stated in the account.

2ndly. That the protection applied to the costs as well as the debt itself.

3rdly. That although the form of the agreement with the creditors was imperfect,—the proposal and the assent not being in the same terms, and the guarantee not being to all the creditors, but only to those who signed the assent,—the protection was valid. *Southgate v. Saunders*, 1 L. M. & P. 553.

ARREST.

Scotch bankrupt.—The Scotch Bankrupt Act, 2 & 3 Vict. c. 41, s. 18, enacts, that a warrant of protection granted to a bankrupt under that act, "shall protect or liberate the debtor from arrest or imprisonment in Great Britain and Ireland, and her Majesty's other dominions, for civil debt," &c., "but such warrant of protection or liberation shall not be of any effect against the execution of a warrant of arrest or imprisonment in *meditationes fuge*, or *ad factum prestandum*, or for any other criminal act." A defendant having a warrant of protection under this statute, was arrested in England on a

capias issued under the 1 & 2 Vict. c. 110, s. 3, on an affidavit that he resided in Scotland, and that he was about to quit England to return to that country: *Held*, on motion, to discharge him out of custody, that a capias so issued was not a "warrant of arrest" in *medietate fuge* within that section, and that the defendant was therefore entitled to his discharge. *McGregor v. Fiskin*, 5 D. & L. 591.

See *Scotch Bankrupt*.

ASSIGNMENT IN TRUST.

To a declaration in debt for goods sold and delivered, the defendant pleaded, that the plaintiff had become insolvent, and that an order of the Insolvent Court had been made vesting the debt in the provisional assignee.

The plaintiff replied, that, after the accruing of the cause of action, and before his imprisonment, and before the commencement of the suit, by an indenture then made between him on the one part, and one Davies on the other part,—after reciting that the plaintiff, being justly indebted to several persons named, in the several sums set opposite to their names in a schedule, and being desirous to make provision for the payment of them, had determined and agreed (not saying *with the creditors*) to assign certain debts to Davies, upon the trusts thereafter declared,—the plaintiff, in pursuance of the agreement, and in consideration of 5s. paid by Davies at or before the execution of the deed, bargained, sold, and assigned, *inter alia*, the debt in question, to have and to hold to Davies absolutely, upon trust, nevertheless to collect and receive the assigned debts, and, out of the moneys to be received, to pay the costs and expenses of the deed and of the execution of the trusts, and then to pay rateably to the several persons named the debts or sums set opposite their names in the schedule, and the surplus, if any, to the plaintiff; and authority was thereby given to Davies to sue for the debts assigned, as the plaintiff's attorney. The replication then proceeded to aver, that the action was commenced by virtue of the indenture, for the sole use of Davies, who was alleged to be *alone interested and entitled to the debt* by virtue thereof, and not for the use of the plaintiff or his assignee; and that the assignee of the Insolvent Court had not claimed, and *could not* claim, any benefit from the cause of action in the declaration mentioned:

Held, that, although the replication would have been unquestionably bad, on special demurrer, for not stating what the facts were that vested the right to the debt in the trustee, and deprived the insolvent assignee of all title to it; yet, that, after *verdict*, the replication was sufficient, the objection being merely that it contained a defective statement of the plaintiff's title. *Smith v. Keating*, 6 C. B. 136.

Cases cited in the judgment: *Vivian v. Shipping Cro. Car. 384*; *Thorpe v. Thorpe*, 1 Atw. 239; *Piphet v. Heame*, 5 B. & Ald. 634; *Widdowson v. Martin*, 2 Cr. & J. 688.

BUILDER.
A person who builds houses upon lands

which he has purchased, and afterwards sells the houses, such transaction being insulated and not part of a general system of business, is not a "builder" within the meaning of the Bankrupt Laws. *Stuart v. Sloper*, 3 Exch. R. 700.

COMPOSITION DEED.

Fraudulent executory agreement.—Void covenant.—A declaration in covenant stated, that, by an indenture made between the several persons whose names and seals were thereunto subscribed and affixed, and who were creditors of the plaintiff of the first part, the plaintiff of the second part, and M. of the third part, it was recited, that the plaintiff was indebted to the persons of the first part, in sums secured by bills of exchange accepted by the plaintiff, and, being unable to pay his debts, he had agreed to give his creditors a composition of 5s. in the pound, to be guaranteed by bills drawn by M. upon and accepted by the plaintiff, and that such composition bills of exchange had been given. And by the said indenture, such of the creditors to whom the plaintiff might have given, or who might be holders of bills of exchange of the plaintiff, did covenant with the plaintiff that they would indemnify him against and in respect of such bills, and all actions, losses, &c., by reason thereof. Averments, that the defendant did, as such creditor, subscribe his name and affix his seal to the indenture, and that, at that time, the plaintiff was indebted to the defendant and his partner in an amount secured by two bills of exchange accepted by the plaintiff, and which were then outstanding. That, when the bills became due, the holder sued the plaintiff for their amount, and, in order to stay the action, he paid a large sum of money. Breach, that defendant did not indemnify the plaintiff. Plea, that before the defendant executed the indenture, the plaintiff was indebted to him and his partner and the other persons, creditors and parties to the indenture of the first part; and the plaintiff being unable to pay the defendant and his partner and the said creditors their debts in full, offered to deliver to each of them a composition bill upon the terms and conditions in the indenture mentioned, provided they would execute the indenture; and thereupon the plaintiff represented to the other creditors, and the defendant and his partner had agreed to accept the composition bills for the same proportionate amount, and upon the same terms and under the same conditions as the said other creditors; and, that upon the faith of such representations, the said other creditors were induced to execute the indenture, whereas, in truth and in fact, at the time such representations were made it was agreed between the plaintiff and the defendant and his partner, that the plaintiff should pay the defendant and his partner the full price of certain goods before then sold and delivered by the defendant and his partner to the plaintiff, and which formed part of the sum due from the plaintiff to the defendant and his partner; and that the plaintiff would further pay in cash to the defendant and his partner 5s. in the pound upon the whole amount due from the

plaintiff to them, in lieu of delivering to them composition bills; and that, for the purpose of inducing the said other creditors to believe that the said representations were true, the defendant should, for himself and his partner, make and execute the indenture, which agreement was at the time of the said other creditors executing the indenture unknown to them: *Held*, on special demurrer, first, that the plea sufficiently stated that a fraud was intended to be committed by the plaintiff and defendant on the other creditors, by a bargain unknown to them, to give and receive more than they were to receive.

2ndly. That the plaintiff could not sue on this covenant, which was part of the same fraudulent executory agreement, and therefore void as against the creditors; and that the defendant might set up such defence although a party to the fraud.

3rdly. That the allegation, that the defendant executed the indenture "on behalf of himself and partner" was rendered unambiguous by reference to the declaration, which showed that the defendant alone actually executed it. *Higgins v. Pitt*, 4 Exch. R. 312.

Cases cited in the judgment: *Cockshot v. Bunnett*, 2 T. R. 763; *Leicester v. Rose*, 4 East, 373; *Howden v. Haigh*, 11 A. & E. 1033.

CONTINGENT DEBT.

See *Guarantee*.

COSTS.

Affidavit of debt.—Date of writ of summons.—Upon an application by the defendant, under the 12 & 13 Vict. c. 106, s. 86, for his costs, the date of the commencement of the action is sufficiently shown by the statement of the writ of summons in the issue delivered by the plaintiff, without any express averment to that effect upon the affidavits. *Deere v. Kirkhouse*, 1 L. M. & P. 783.

See *Affidavit of Debt*.

CREDITOR.

"*Having security.*"—*A.* gave *B.* a warrant of attorney, under which judgment was entered up. On the 24th August, 1840, a *fi. fa.* issued, under which the sheriff, on the 26th, seized *A.*'s goods, consisting of machinery, iron, &c. On the 3rd of September, *A.* committed an act of bankruptcy. On the 8th and 9th of September, the sheriff sold part of the goods by auction, in lots, and received a deposit on each lot, but the lots were not separated from the mass. On the 11th of September, a *fiat* in bankruptcy was granted against *A.* On the 19th of September, and following days, the goods were weighed out and delivered to the purchasers. The sheriff subsequently paid over the whole of the proceeds of the sale to *B.*

Held, that the assignees of *A.* were entitled to recover the whole of the proceeds, including the deposits, inasmuch as there had been no perfect sale, but only an inchoate sale, at the time of the *fiat*, and *B.* still remained a creditor of *A.*, having security, within the provisions

of the 108th section of the 6 G. 4, c. 16. *Ward v. Dalton*, 7 C. B. 643.

See *Affidavit*; *Arrangement*; *Assignment in Trust*; *Judgment Creditor*.

DISCHARGE OF DEBTOR.

1. *Material allegation.*—Where the precise time of the happening of an event is,—with reference to the purpose for which it is alleged in pleading,—of the essence of that event, the circumstance of its being alleged in pleading under a *vide licet*, does not render it immaterial.

In debt, the defendant pleaded, that after the accruing of the causes of action, and before the commencement of the suit, *to wit*, on the 22nd of November, 1843, a petition for the protection of the defendant from process, was duly, and according to the statute in such case made, presented by the defendant to the Court of Bankruptcy; that afterwards, and before the commencement of the suit, *to wit*, on the 29th of Jan., 1844, a final order for protection and distribution was made in the matter of the said petition, by a commissioner duly authorized in that behalf, and that the causes of action accrued before the date of the filing of the petition.

Special demurrer,—for that the plea did not disclose any sufficient answer to the action, as the final order must be presumed to have been made according to the statutes in force immediately before the commencement of the suit, or at the time of pleading, *viz.* the 5 & 6 Vict. c. 116, as amended by 7 & 8 Vict. c. 96, and a final order under those statutes only protects the person of the defendant from arrest for debts and causes of action accruing before the filing of the petition, and is no bar to an action for the recovery of such debts; that if the defendant intended to set up, as a defence, a final order made after the passing of the 5 & 6 Vict. c. 116, (Nov. 1, 1842), and before the passing of the 7 & 8 Vict. c. 96, (Aug. 9, 1844), the plea should have distinctly alleged that the said final order was made after the passing of the former act, and before the passing of the later act; that the plea was uncertain and ambiguous, and the plaintiff could not take a safe issue thereon, for that the defendant might prove the plea by the production of a final order made after the passing of the 7 & 8 Vict. c. 96, which, for the reasons before mentioned, would be no answer to the action; that it was uncertain on what final order the defendant relied, or under what statute the plea was pleaded; and that, as the dates in the plea were all laid under a *vide licet*, the plaintiff could not tell with certainty when the final order was made:

Held, that the plea was good, and that it showed with sufficient certainty, that the order was made after the passing of the 5 & 6 Vict. c. 116, and before the passing of the 7 & 8 Vict. c. 96; and that the allegation of time being material, must, if traversed, be proved as laid, though under a *vide licet*. *Nash v. Brown*, 6 C. B. 584.

Case cited in the judgment: *Bissex v. Bissex*, 3 Burr. 1739.

[To be continued in our next Number.]

The Legal Observer,

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SATURDAY, JUNE 14, 1851.  
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LAW BILLS BEFORE THE HOUSE OF PEERS.

THE adjournment of the two Houses of Parliament for the Whitsun holidays, presents a resting point from which it is possible to look back upon the measures already introduced, and to form some opinion as to the probable fate of those still undisposed of, as well as to calculate the chances of some which are yet only in promise. The only measure of any importance relating to the law, which has yet found its way to the lower House, is the County Courts Extension Bill, noticed *ante*, p. 90.

The *Law of Evidence Bill*, the object of which, as our readers are aware, is to render the parties to an action and their wives, competent witnesses in all cases, has been referred to a Select Committee of the House of Lords, upon the suggestion of Lord Brougham, with the understanding, that members of both branches of the profession are to be examined upon the merits of the bill, and that the opinions of the Judges of the Superior Courts, are not to be disregarded upon a question of this nature, even if they should not be so fortunate as to concur with the views which are supposed to actuate a majority of the County Court Judges. It is also conceded, that the experiment should be tried without outraging the confidence of domestic life, by compelling a wife to appear as a witness *against* her husband, a concession it is of the utmost importance to society should be effectually maintained, and for which the better half of the community at all events, has reason to be grateful. The reference of a bill to a Select Committee, which has not yet been submitted to the House of Commons, at such an advanced period of the Session, is equivalent to a withdrawal, and we take for granted that the measure will

not be further proceeded with. The change proposed in the law of evidence, however desirable, is not, in the opinion of any person, we presume, urgently required, and now that the merits of the question are fairly under the consideration of the public and the profession, a premature discussion might prejudicially interfere with the deliberate judgment we hope to find expressed upon this subject when brought forward hereafter.

Lord Campbell's amended Bill, for the *Registration of Assurances*, the objections to which in a practical as well as a constitutional point of view, have been repeatedly adverted to in former publications, stands for Committee on Monday evening (the 16th instant,) and is elsewhere referred to. Before the measure can have arrived at such a stage in the House of Commons as to afford an opportunity for profitable discussion (should it ever arrive at it), the Circuits will have commenced, and many members of that House, connected with the legal profession, be debarred from taking any share in the discussion. Under such circumstances, it is not to be supposed that the government will press the bill through parliament; and the interval that must occur between this and the next session may afford an opportunity for the removal of some of the numberless difficulties which encompass the plan now under consideration.

The Bill introduced by Lord Brougham early in the session for *Abolishing the District Courts of Bankruptcy*, and transferring the jurisdiction to the County Court Judges, and which in parliamentary nomenclature is entitled "The County Courts Extension Bill, (No. 2,)" has been reprinted as amended in Committee. The clauses in the original bill which directed that petitions for adjudication in bank-

ruptcy, should be proceeded with before the County Court Judge of the district at some one of the 24 towns named in a schedule, has been omitted, as well as some half dozen other clauses having reference rather to the duties and emoluments of the officials of the Court of Bankruptcy, than to what can be properly called the business of the Court. The substantive objections we thought it our duty to suggest to the bill upon its introduction,¹ however, are in no respect removed by the alterations made in it. A branch of legal judicature of great importance to the commercial community, is proposed to be thrown by this bill upon some 50 functionaries, appointed for the discharge of duties of a totally different description, and who for the most part, have no practical or professional acquaintance with the Law of Bankruptcy, or the complicated machinery by means of which its administration is carried out. Again, under the new bill, the County Court Judges are to sit for the dispatch of bankruptcy business at such times as the Lord Chancellor may direct, but those who framed the bill seem to forget, that the duties of a County Court Judge frequently render it imperative on him to sit one day at least during every month, in a dozen or more distinct places within his district, and that his absence from the Court towns in which a petition for adjudication in bankruptcy is filed, for even a single day, may frequently render the whole proceeding inoperative as regards the creditors of the bankrupt! Those practically acquainted with the subject know, that bankruptcy is constantly resorted to as the only means of protecting the goods of an insolvent trader from seizure and sale under an impending execution, so as to render them available for general distribution amongst his creditors, and if the judge, who is bound to examine the witnesses in support of the requisites necessary to found a bankruptcy, and to adjudicate upon such evidence, is engaged in a distant part of the county, the prompt operation of the law is impeded, and the whole proceeding rendered ineffectual.

The clause in the original bill, by which it was proposed directly to increase the salaries of the County Court Judges, has been struck out in the amended bill, but a new provision is introduced, which would *prima facie* entitle the County Court Judges to an augmentation of salary, and is proposed, we presume, with reference to that object.

Section 16 of the amended bill provides that "The Judges of the County Courts shall reside within their respective districts, and no such judge shall practise as a barrister-at-law." It so happens, we believe, that only a very limited number of the County Court Judges have found it expedient to practise as barristers either before or since their appointment, but if this restriction is to be imposed upon them by legislative enactment, and without a corresponding compensation, at the end of five years, there will be good reason for complaint. In the change of places contemplated by the new bill, it is intended, that the country Commissioners in Bankruptcy, as well as such of the registrars of that Court as shall be eligible and as the Lord Chancellor shall think fit, shall be appointed County Court Judges, but as it is apprehended that some of the registrars may reject the proffered honour, it is proposed by a proviso to section 30, to enact, "that if any such registrar shall decline to be so appointed one of such judges, the salary of such registrar shall no longer be payable, nor shall he be entitled to any annuity under any act relating to bankrupts." In other words, there is to be no compulsion on the registrar to become a judge, but if he refuses he may starve. A novel, but no doubt an efficient process for filling a judicial office!

There is only one other of the changes suggested by the new bill, (which is somewhat equivocally entitled "The *first* County Court Extension Act, 1851,") to which present space allows of our calling attention. Under the modern Bankrupt Law, the office of official assignee is one of acknowledged importance, and the statutory qualification of the persons hitherto appointed to that office has been, that they should have been merchants, bankers, accountants, or persons engaged in trade within the united kingdom.²

In Lord Brougham's Bill, as originally printed, the expediency of preserving the qualification of the official assignees was recognized, as it was proposed to be enacted by section 21, that:—

"As vacancies occur the official assignees of the Court of Bankruptcy acting in London shall be reduced to six in number, and from and after the commencement of this act some one of the official assignees now acting in the country shall reside at and act for such of the places mentioned in Schedule A. to this act annexed, as the Lord Chancellor shall think

¹ See vol. 41, page 285.

² 1 & 2 Will. 4, c. 56, ss. 22 and 24; 5 & 6 Vict. c. 122, s. 48.

fit to direct, and the Lord Chancellor may appoint such additional number of official assignees as may be required to act at the places mentioned in such Schedule; provided that in no case shall more than one official assignee be appointed to act in any such place; and provided also, that every person to be so appointed shall be a merchant, broker, or accountant, or a person who has been engaged in trade in the united kingdom for a period of 10 years, or who has acted as the managing clerk of an official assignee for a period of seven years."

This clause, however, is omitted from the amended bill, and in its place we find the following:—

"As vacancies occur, the official assignees of the County of Bankruptcy acting in London, shall be reduced to six in number, and from and after the commencement of this act, the official assignees now acting in the country shall reside within and act for the County Court districts as the Lord Chancellor shall think fit to direct, and at every place where there shall be no such official assignee, and also on the death, resignation, retirement, or removal of any such last-mentioned official assignee, the clerk of the Court for the time being shall be the official assignee."

According to the new bill, therefore, the Clerks of the County Courts (few, if any of whom, we apprehend, are qualified by being merchants, brokers, accountants, or engaged in trade,) are, in addition to their multifarious duties as clerks, to have the duties and responsibilities of official assignees in bankruptcy thrown upon them. We shall be glad to learn whether this change in the machinery of the Court of Bankruptcy has been submitted to the City Committee of Merchants and Traders, and if it be possible that they can regard it with approval?

CONDUCT OF THE COUNTY COURT JUDGES.

Two cases involving serious charges against the Judges of the County Courts of Brompton and Liverpool, respectively, have been brought under the notice of the public during the bygone week. Both these cases are still in course of judicial investigation, and it would be manifestly unjust to anticipate the ultimate result, or even to enter upon a premature discussion in reference to the alleged facts. The subject is only adverted to as affording fresh proof, of what seems to be wholly unknown to some persons in influential positions, that the proceedings of the County Courts do not afford unmingled satisfaction to the suitors or the public. It is not necessary to con-

tend that the value of the County Courts, and their claims upon public respect, depend altogether upon the qualifications, capacity, and demeanour of those appointed to preside in them. The judges of those Courts, however, without the salutary check of a Bar or a jury, and for the most part without appeal, have to decide as well upon multiplied questions of fact, as upon every variety of legal question that can arise in a civil suit. Under such circumstances, temper, bearing, and judicial fitness in the judge are matters of more than ordinary importance; and by some means or another, it does happen that many, if not a majority, of the County Court judges have the credit of being eminently wanting in those qualities. It is a painful and an ungracious task to glance even at the personal infirmities and defects of a person holding a judicial office, especially when the individual, who is the just subject of complaint as a judge, is in private life estimable and respected. Suffice it to say, therefore, that in professional and in other circles complaints are constantly made of the conduct of County Court Judges, which have no reference to either Mr. Amos or Mr. Ramshay, and that before it is determined to confer on the County Court Judges the importance which attaches to increased and extended judicial authority, the public interest points to the necessity of a reconsideration and revision of the appointments originally made. It is generally felt that certain of those appointments were made under influences which never could have prevailed were it supposed that the persons appointed were to fill any other or higher position than that of Judge of Courts for the Recovery of Small Debts.

REGISTRATION OF ASSURANCES.

It seems scarcely possible that this bill can pass in the present Session. The Lord Chancellor has intimated his intention to propose amendments, which he wished to be considered in *select* Committee. It appears by the minutes of proceedings, that the House will go into Committee on the 16th instant. Whether the amendments will be adopted at once, or referred to a Select Committee seems to be uncertain; but of course the bill must be again reprinted with the further amendments; and the landowners, as well as the profession should have an opportunity of considering the bill as altered.

We subjoin some able statements on the

measure taken from the proceedings of the solicitors at Lincoln and Birmingham.

MEETING OF SOLICITORS AT LINCOLN.

THE Solicitors practising in the County of Lincoln, present at a meeting convened by the Lincolnshire Law Society, at the Great Northern Hotel, Lincoln, on Saturday, the 17th day of May, 1851, the president of the Society, *John Hett, Esq.*, in the Chair, entered into the following Resolutions:—

1st.—That in the opinion of this meeting, the effect of several late acts of the legislature has been to render the title to land more secure, and the expense of its transfer less onerous than heretofore; and that such measures—though tending to reduce the profits of the attorneys and solicitors—have never met with the slightest opposition from them, but on the contrary have been cordially approved and fully carried out.

2nd.—That on the occasion of its being proposed in the year 1832, to establish a General Register of Deeds, although the plan then suggested was framed by a conveyancer of the highest eminence, the attorneys and solicitors of this county, (in common with the great majority of this branch of the profession in England), were, it is believed, unanimous in opposing that plan, and the bill was rejected by a large majority in the House of Commons.

3rd.—That having carefully perused and fully considered the provisions of the bill now before the House of Lords, to establish a General Registration of deeds, they are conscientiously and firmly of opinion that (though, if carried into effect, it might remove some evils of very rare occurrence, and in great measure remediable in other ways at little or no cost), the adoption of the plan would materially increase the expense attending the transfer of real property; and that, particularly with respect to those smaller transactions which compose the great bulk of conveyancing business, such increase of expense and delay would be highly injurious and oppressive; while in larger transactions, which might more easily bear the extra expense, the advantages to be derived from the registration proposed would at best be equivocal and avowedly remote, and that the requiring every individual proprietor to deposit his title deeds in the Register Office, would be a very obnoxious measure.

4th.—That the instances of loss arising from fraud, the suppression of deeds, &c. are of exceedingly rare occurrence; and are mostly the result of ignorance or negligence, which no act of parliament will prevent; and are in the experience of the persons present, almost wholly confined to two descriptions of cases,—viz., first, where persons have suppressed a marriage settlement, and, secondly, where proprietors have retained possession of deeds relating to estates, part of which they have disposed of, have afterwards represented themselves to be

entitled to that part which has been conveyed to others; and in the opinion of this meeting it would be easy to prevent frauds of this description, without recourse to a general Registration of Deeds.

5th.—That the system which prevails of obtaining temporary loans on a deposit of deeds, of which proprietors avail themselves to a great and increasing extent, and which is attended with much advantage to both borrower and lender, and is effected with safety, economy, and dispatch, will be materially interfered with, and rendered hazardous and costly, if not wholly abolished by the bill in question, and the exposure to which the private affairs and arrangements of individuals and families, would be subjected by a general registration is highly objectionable, and would open a wide door to parties of an unprincipled character, to avail themselves of the information supplied, for improper purposes.

6th.—That the great majority of deeds prepared in the country are of an inexpensive and simple description, and the investigation of titles involves little difficulty and cost; but where it is otherwise, it is the practice to provide conditions of sale framed to meet the state of the title, against the vexatious expenses and delay formerly incurred.

7th.—That supposing the Register Office to be open every working day in the year, there is reason to believe that on an average 1000 deeds would daily be offered for registry. That it is most unreasonable to suppose that such an establishment as that which appears to be contemplated by the bill can perform the duties prescribed, viz., that of comparing the deeds to be registered with the duplicates; of making, or attending the making of searches; supplying certificates; receiving and discharging caveats; making, examining, and correcting maps; and the other routine business of the office, without creating the greatest inconvenience, and the most injurious delay. That the expense of making the requisite search, the preparation and deposit of a caveat, the making of a duplicate deed, the registration of the deed, the withdrawal of the caveat, the formation of a map, and other incidental expenses, will be very considerable; while in many cases a very serious additional expense will be incurred by the necessity for a journey and personal attendance of the solicitor concerned at the office, and for a revision of the map, &c. And when it is considered that a great part of the sales and mortgages which are made in any one year are in fact necessarily required to be completed at one period of the year, viz. at Lady Day, there must evidently be such an overwhelming accumulation of business in the office at such period as to make that delay most injurious if not intolerable, and in all probability create great confusion and serious errors.

8th.—That for these and other reasons which might be mentioned, this meeting cannot regard the measure as calculated to carry out any of these important advantages which it would appear from the Queen's Speech it was

intended to promote; but, on the contrary, it would give no increased security to titles; that it would increase rather than diminish the causes of litigation; and would add very materially to the cost attending the transfer of real property.

PETITION OF SOLICITORS AT BIRMINGHAM.

The petition of the solicitors in the town and neighbourhood of Birmingham contains the following amongst other reasons against the Bill:—

That judging from experience in register counties, the present registers have caused great additional expense to purchasers; in some instances amounting to 40*l.* and even 50*l.*; have not answered the purpose intended, by giving any additional security, but have been attended with much litigation, as after some lapse of time the search cannot be safely relied on. The following quotation from that eminent lawyer, Sir Edward Sugden, confirms this,—“The present registers have led to much litigation, and have occasioned great expense. In one case, in Ireland, the costs of a search were enormous; in several instances in both countries, they have amounted to 40*l.* or 50*l.* The officers themselves admit that even their searches are frequently insufficient, and that they missed registered documents. Probably not one-twentieth part of the searches is effectual, or could be safely relied upon. Great numbers of instruments have been registered in a manner directly contrary to the provisions of the acts, and therefore ineffectually in law. The slightest mistake may be fatal.”

That the proposed measure is so very complicated, and the additional expense, however low the fees may be, will be so considerable, that it will totally prevent the small farmer and manufacturer from making purchases or borrowing temporary loans, and it will also put an end to bankers advancing a sum of money on the deposit of title deeds, which, in many instances that have passed under the notice of the petitioners, have been of incalculable benefit to the manufacturer and owner of property, and thereby saved him much trouble, inconvenience and expense.

That in the division and subdivision of land by building leases, great difficulty will occur in searching for and identifying the land, as well as in the various exchanges and interchanges that are almost daily taking place; in fact, so great will be the difficulty that it will be impossible to be done without frequent and repeated inspections of the title deeds by the owners or their agents who are well acquainted with the property.

That the scheme will involve the necessity of an immediate transmission of all assurances to London by the solicitor himself or by some confidential person, otherwise a secret and fraudulent assurance to a third person may be rapidly conveyed to London by railway, and be first registered to the certain loss and possible ruin of a *bond fide* purchaser.

That during the experience of the petitioners, (some of whom have been in practice nearly half a century,) little or no difficulty has arisen in consequence of the owners of property keeping the title deeds in their own custody, therefore the petitioners are of opinion that the proper place for the safe custody of a man's title deeds is his own iron chest, he himself being more interested in such custody than any other person, and that such right ought not to be taken away.

That the proposed measure will open a door to the disclosure of a man's dealings, and the state of his affairs, and probably tend to the utter ruin of his credit, as constant application will be made to the registry, stratagems of all sorts will be resorted to, to evade the clause intended as a check upon inquisitive searches and the creditor of a mortgagor or even the creditor's creditor, and in fact almost any person, may declare that he has such an interest in the land as will entitle him to an inspection of the register without incurring the penalty.

CHARITABLE TRUSTS BILL.

UNDER the Charity Commission of 1849, for inquiring into cases which were investigated by, and reported upon, by the Charity Commissioners, but not certified to the Attorney-General, the Commissioners made a second report on the 29th May, 1851, in which they state the following abuses or defects:—

1. The want of some competent authority to which access might be had for obtaining advice, and which would possess sufficient powers of supervision and control.

2. The want of proper supervision and of a cheap tribunal for the smaller matters.

3. The want of an alteration in the law, giving facility for the exchanges of charity property, for the consolidation of smaller charities, and the vesting outstanding legal estates in trustees.

To supply these wants the Commissioners, with the sanction of the Secretary of State for the Home Department, have prepared the Bill of which the following is an analysis. It was brought into the House of Lords by the Lord Chancellor on the 2nd inst. The attention of our readers is called to the clauses (printed in larger type) which show the extent of the jurisdiction proposed to be given to the Commissioners, and to the Masters in Chancery, and the County Court Judges.

Appointment of five Charity Commissioners; sect. 1.

Oath to be taken by Commissioners; 2.

Appointment of secretary, treasurer, and clerks; 3.

Two paid Commissioners, being barristers of 10 years' standing; 4.

Salaries of paid Commissioners. The first Commissioner, 2,000*l.*; the second, 1,200*l.*; the secretary, 800*l.*; the treasurer, 700*l.*; 5.

Retiring allowance to paid Commissioners and officers; 6.

Commissioners to hold meetings and make rules; 7.

Commissioners to entertain applications for their opinion and advice; persons acting on advice of Commissioners to be indemnified; 9.

Commissioners may issue precepts for production of accounts and documents, and the attendance of witnesses: 10.

Commissioners may administer oath to witnesses; 11.

Penalty for persons refusing or neglecting to comply with precept of Commissioners; 12.

Purchasers without notice not bound to answer; 13.

Mortgagees and trustees not bound to produce deeds without notice to mortgagors or cestuique trusts. Persons not bound to criminate themselves by their answers; 14.

Officers having custody of records to furnish copies and extracts, if required by Commissioners; 15.

Commissioners may certify certain cases to the Attorney General, who may institute legal proceedings with respect thereto: 16.

Attorney General's certificate to be evidence that particulars of cases have been certified by Commissioners; 17.

Charge not exceeding twopence in the pound on incomes of charities amounting to or exceeding ten pounds; 18.

Charge to be paid and collected in such manner as Commissioners shall direct. First payment to be due three months after passing of act; 19.

Penalty for trustees not paying or remitting the amount of assessment on any charity; 20.

Salaries and expenses of Commission to be paid by treasurer; 21.

Annual surplus of fund to be raised under act (after payment of salaries and expenses) to be invested in parliamentary securities in names of Commissioners; 22.

Treasurer and collectors may give sufficient receipts, and treasurer to keep accounts and pass his accounts annually; 23.

Treasurer to give security; 24.

Notice of legal proceedings as to any charity by any person, except the Attorney General, to be given to the Commissioners; 25.

Commissioners by their certificate may direct what proceedings (if any) shall be

taken as to any charity, and by whom and in what Court, and may suspend or prohibit proceedings; 26.

Courts not to entertain any proceedings as to charities except upon the production of the certificate of the Commissioners; 27.

Attorney General may proceed *ex officio* without giving any notice to Commissioners. Proceedings already commenced and pending not to be affected by act; 28.

Application may be made to a Master in Chancery by state of facts, in cases of charities, the incomes of which exceed *thirty* pounds and do not exceed *one hundred* pounds; 29.

State of facts to be verified by affidavit; 30.

Master to proceed on state of facts, and to make such orders as may now be made by the Court; 31.

Master may make special reports or orders subject to confirmation; 32.

Master may order advertisements or services; 33.

Master may regulate proceedings; 34.

Master to have all usual powers; 35.

Orders, &c. to be filed; 36.

In case of illness or absence of any Master, the Master acting for him to have all usual powers; 37.

Judges of County Courts to have jurisdiction in cases of Charities, the incomes of which do not exceed *thirty* pounds; 38.

Commissioners may direct cases within the jurisdiction of a Master or County Court to be taken before a superior tribunal in the first instance; 39.

No order of County Court Judge for the removal or appointment of trustees or approval of a scheme to be valid unless confirmed by Commissioners; 40.

Commissioners, if dissatisfied with the order of the County Court Judge, may remit the case to him for reconsideration, or may transfer the matter to a Master or Court of Chancery; 41.

Judge not to settle scheme, or remove or appoint trustees without previous notice by advertisement, and may direct notices in other cases. Copy of scheme and order removing or appointing trustees to be transmitted to Commissioners for registry; 42.

Orders of Judge of County Court to be enforced as under 9 & 10 Vict. c. 95; 43.

Appeal; 44.

Proceedings on appeal; 45.

Bond to prosecute appeal may be put in suit; 46.

Power for Commissioners in certain cases to order what judge shall have jurisdiction; 47.

In certain cases of charities, the incomes of which do not exceed *thirty* pounds, application may be made to Master in Chancery; 48.

Master or judge not to try titles, &c. : 49.

In cases of charities for exclusive benefit of persons of a particular religion, trustees to be of same religion ; 50.

Land holden upon trust for a charity, subject to jurisdiction of judge, may be vested in the Charity Commissioners ; 51.

Commissioners to be bare trustees ; 52.

Memorandum of vesting order to be made and endorsed on title deeds and transmitted to Commissioners ; 53.

Record of proceedings to be kept by clerk of County Court ; 54.

By whom applications may be made ; 55.

Judge of Chancery, Master in Chancery, and Judge of County Court may make orders as to costs ; 56.

Lord Chancellor, &c., may make orders for regulating proceedings under act ; 57.

Account of trustees of charities to be delivered to the clerk of the County Courts. Duplicate or copy of account to be sent to Commissioners ; 58.

Penalty on trustees neglecting to send statement of accounts ; 59.

Commissioners to inquire into the propriety of proposed exchanges of charity lands ; 60.

Subsequent proceedings for effecting such exchanges ; 61.

Commissioners to inquire into the propriety of redeeming rent-charges applicable to charity ; 62.

Subsequent proceedings for effecting redemption ; 63.

Corporations, and tenants with a limited interest, &c., empowered to effect exchanges or redemption of rents-charge ; 64.

Copy of Commissioners' certificate to be sent to Attorney General ; 65.

Copy of certificate of Commissioners under their seal to be evidence ; 66.

Copy of every order of exchange or redemption to be sent to Commissioners ; 67.

Notice of death, or incapacity, or ceasing to act of trustees to be sent to Commissioners ; 68.

Charity lands, &c., to vest in new trustees by virtue of their appointment under order of the Court ; 69.

Legal estate of hereditaments now vested in municipal corporations on charitable trusts to be vested in trustees ; 70.

Mode of proceeding to obtain sanction of Court for granting building leases, working mines, doing repairs, &c. ; 71.

Mode of obtaining sanction of Court to compromise of claims on behalf of charity ; 72.

Charities for similar objects may be united ; 73.

Letters, &c., received and sent by Commissioners for the purposes of act to be free of postage ; 74.

Accounts of Charity Commissioners to be audited ; 75.

Annual report of proceedings of Commis-

sioners to be made and laid before Parliament ; 76.

Limitation of actions against persons executing act ; 77.

Act not to extend to universities or religious or charitable institutions maintained by voluntary contributions ; 78.

Interpretation clauses ; 79.

Short title of act ; 80.

REPEAL OF CERTIFICATE DUTY.

THE motion of Lord Robert Grosvenor for leave to bring in this bill, stands for Tuesday, the 1st July. The greatest pains have been taken by his lordship to secure a favourable position on the list of business for the day, for the probabilities of success depend in no small degree upon the time when the case is brought on. It is deemed of great importance not to let the Session pass without again appealing to the sense of justice of Parliament, and pressing for a decision on the merits of the question.

The time has now arrived for being fully prepared with petitions from all parts of the country and from Ireland and Scotland, in order that they may be presented at the time appointed for the motion. If there should be a considerable majority, it is not probable that the Government will make any further resistance.

The Incorporated Law Society having charge of the case in London, will, of course, supply the Members of the House with the printed statement in support of the measure, and give notice of the time when the motion will be made. The London practitioners will also, of course use their influence with the representatives of the metropolitan boroughs and the counties of Middlesex, Essex, Surrey, and Kent ; but their exertions will be in vain, unless the solicitors throughout the country urge the support of their friends and clients in the House.

One strenuous and united effort will decide the question.

We are aware that the general impression is, that the repeal of the tax cannot be carried through both Houses this Session ; but the promoters of the measure are advised that it is of essential importance to secure a majority on the division which will take place ; and it is, therefore, earnestly trusted that every practitioner will exert himself to the utmost to procure the attendance of his friends in the House to support the motion.

NOTICES OF NEW BOOKS.

The Process of Thought adapted to Words and Language. Together with a description of the Relational and Differential Machines. By ALFRED SMEE, F.R.S., &c. Longman, Brown, Green, and Longmans. 1851. Pp. 77.

WE very rarely notice works unconnected with Jurisprudence, but incline to think that many of our readers will be interested with several of Mr. Smee's philosophical chapters, particularly on the natural process of thought; on the communication of ideas; on language; on induction; and on the laws of thought. We are, however, more legitimately attracted by the chapter on *Evidence and Testimony*, which, being very concise, we shall extract in *extenso*, and our readers will bear in mind that the remarks it contains are those of a medical writer of great scientific research, who, in the investigation of truth, has applied his mind to the consideration of the various degrees of probability in human testimony, its imperfections and contradictions. His views of the subject are thus stated:—

"Trials are employed to determine the truth of an accusation against a certain person or persons, that is, whether he or they at a certain place did something which constituted a cause which produced an effect, the whole occurrence having taken place between certain times. This constitutes the charge, for instance, 'John, at No. 1, Peaceful Cottage, beat James, last Monday, at 10 o'clock.' For the purpose of ascertaining whether the offence was really committed, a number of witnesses are called, and the evidence which they each received, through the medium of their senses, is recorded. If the images received upon the sensorium of the witnesses, according to their statements, correspond entirely with the images which such a charge should have produced, the guilt of the party is said to be proved by the concurrence.

"In carrying this process to the very utmost possible perfection to which the system is capable, every word should be so described that no possibility of wrong interpretation could occur. Then and only till then can the statements of the witnesses, when they express that which they receive upon the brain by symbols or words, be relied upon, and no error be likely to occur from ambiguity. When the sets of words or symbols derived from the witnesses, are compared with the words or symbols, constituting the charge, and are found to exactly concur, then a mere piece of mechanism would be sufficient to show the guilt of the party.

"But we rarely can procure the evidence of witnesses to prove charges in serious offences. The eye of man is shunned at such periods,

and thus no one sees the deed, and the entire evidence is scarcely ever procured. In these cases, the guilt of the party must of necessity be one of probability or possibility as there cannot be an absolute concurrence between the symbols of the evidence and the symbols of the charge. Nevertheless, upon that possibility the law has wisely ordained that criminals should be convicted, and expiate their crimes by the highest punishment.

"Suppose, for instance, 'John is charged with killing Thomas with a knife, at 1, Miniver Place, at 2 o'clock on Monday.' In this case, evidence might be adduced that John was there at that time, and that John's knife actually killed Thomas. Now, in this instance, the mode of the act of killing would not be proved but from the concurrence in all other particulars, and the total want of disagreement. John is probably guilty, and the jury would doubtless return such a verdict.

"This verdict, however, is only one of high probability, and we must not forget that James, of whom no evidence was given, and against whom no charge was made, might have taken the knife from John's pocket, killed Thomas, and then put the knife back again, totally unknown to John. There can be no question but that in the annals of English jurisprudence, notwithstanding all its care, innocent persons have fallen victims from probable or possible guilt having been confounded with actual guilt.

"The laws of affirmation, negation, possibility and probability, might be turned with good account to prevent this serious mischief. The accusation might be clearly set out; the evidence of the witnesses might be taken before the jury, who are manifestly the proper persons to assign a right word or symbol to the impression which the witnesses received of the event in question. Having arranged these symbols, one by one, opposite the corresponding symbols of the accusation, a mere engine would describe the possible, probable, or actual guilt of the person accused.

"Although I have assumed a criminal case for the purpose of my argument, yet the same reasoning would hold good in every civil case. One man sustains a damage at the hands of a second; the charge is set out, the witnesses give their testimony, and the question of identity between the charge and testimony is one which may be determined by mechanical contrivances when the words in the two instances are accurately set out.

"In every case, the intervention of the jury is necessary to assign a word to express that which the witness describes, because it would be impossible to obtain witnesses who shall be enabled to declare the particular nervous fibres which were excited when the event occurred. Moreover, the examination of every word with such minuteness, would be too tedious, though it might admit of minute investigation. The meaning of every important word should be fully unravelled in every instance.

"When the defendant answers a charge, he

should, if it be unfounded, admit every circumstance which is true, and deny only the circumstances which are false. By this proceeding, the attention of the jury is likely to be concentrated upon the immediate point in dispute, and thus be enabled carefully to estimate the value of the testimony adduced. By this course, the accused destroys the apparent effect of that high probability which is likely to be produced by an extensive concurrence between the charge and the evidence.

"In most cases of testimony the assertions of all the witnesses do not agree. Some give evidence of one kind, some of the opposite, so that the evidence upon the same point is contradictory. In these cases, the laws of induction and deduction are applied by the jury, to judge of the value of the testimony, and that which affords most probability, or that which most coincides with former knowledge, is received.

"We thus perceive how imperfect, at best, are our conclusions, even when based upon the most approved evidence. We cannot fail to observe, that however carefully a jury may investigate a case, however unbiassed and unprejudiced they may be, yet, nevertheless, their verdict, in a majority of cases, can only be considered as proving the probability or possibility of the guilt of any person. In every instance the result is obtained by the artificial means afforded by words and language, and we should never forget that wherever words are employed, there errors may creep in."

There is also a chapter on logic and the "art of quibbling,"—the latter of which, in the estimation of some of "our enemies," is not unconnected with legal proceedings.

QUESTIONS AT THE EXAMINATION.

Trinity Term, 1851.

I. PRELIMINARY.

1. Where, and with whom did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal books which you have read and studied.
4. Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. By what process are personal actions commenced in the Court of Queen's Bench, Common Pleas, and Exchequer?
6. What is the difference in the commencement of an action of ejectment from other actions? State what is the first proceeding in an action of ejectment.
7. An infant cannot prosecute an action either in person or by an attorney; how, then, may he, and how does he, usually sue?

8. If a feme covert be sued alone, how must she appear, and why so?

9. For any debt due to a bankrupt previously to a bankruptcy, (in which debt he is personally interested,) who should sue, before assignment of his effects, and after such assignment?

10. State the distinction between an irregularity in practice and a nullity.

11. Will a verbal promise to pay the debt of another be sufficient to found an action?

12. In what cases is a husband liable for debts contracted by his wife during coverture?

12. How must corporations aggregate sue or defend?

13. In what cases are hundredors now liable for damages done by rioters?

15. What are the principal requisitions of the statute 1 & 2 Vict. c. 110, relating to warrants of attorney, a strict compliance with which is required by the courts?

16. Where a judge's order is made by consent given by any trader defendant, in any personal action, authorising judgment to be entered up, and execution issued, what is necessary to be done with such order, so as to prevent the same, and the proceedings under it, from becoming null and void?

17. If a plaintiff bring an action in either of the Superior Courts and recover, by verdict, a sum less than 20*l.*, and obtain no certificate from the judge who tries the cause, is the plaintiff entitled to tax his costs upon producing the postea; or is the defendant any longer bound to take any step to deprive the plaintiff of costs?

18. Does it make any difference if the defendant suffers judgment by default?

19. Can a party prosecute a plaint in a County Court upon a judgment recovered in one of the Superior Courts, for a debt less than 50*l.*?

III. CONVEYANCING.

20. Describe an estate of inheritance.
21. State the distinction between legal and equitable estates.
22. Into what sorts are estates in fee simple divided?
23. What are estates less than freehold?
24. Define what is meant by the term "title by purchase."
25. What is the difference between uses and trusts? and state the words or form of expression by which each is created.
26. State the law of primogeniture.
27. Who is capable of conveying real estate? and who (in the technical sense of the term) of purchasing?
28. What is a deed? and what are its requisites?
29. How may a deed be avoided?
30. Enumerate the ordinary kinds of conveyances at Common Law of land of freehold tenure.
31. To what persons does the power of transmission by will belong?

32. What solemnities are necessary to the due execution of a will?

33. Under what formalities may a will be cancelled by the order, and in the life-time, of the testator?

24. What are extraordinary conveyances, or those by matter of record?

IV. EQUITY AND PRACTICE OF THE COURTS.

35. All persons materially interested in the subject of a suit ought to be parties to it. State why, and whether this rule admits of any and what exceptions?

36. Has a Court of Equity power to control proceedings in Courts of Common Law, and how and in what cases is the power exercised?

37. What are the principal matters in which Courts of Equity have practically exclusive jurisdiction and power to afford relief?

38. In what respect do the remedies given by a Court of Equity and a Court of Law respectively, for the nonperformance of a contract, differ?

39. Is or is not an attesting witness to the execution of a deed affected with notice of the contents of the deed, and why?

40. In the administration of legal assets by the Court of Chancery, in what order are debts payable?

41. If a party interested in a fund in Court assign it to another, either absolutely or in mortgage, what course is the assignee to take to make his assignment available?

42. What relief does a Court of Equity give, where a tenant in common desires to have the property divided, in the cases of land and a house respectively?

43. What acts constitute "waste"?

44. Will a Court of Equity, in any case, restrain a tenant for life without impeachment of waste from committing waste, and if so in what cases?

45. Describe the proceedings, as well those necessary as those usually incidental, in a suit for the administration of a testator's estate, where the personal assets are large.

46. How is the time for putting in an answer enlarged?

47. What is the mode of putting in an answer, and may the oath or signature be dispensed with, and how?

48. What is the ordinary division or arrangement of the contents of a bill in Chancery?

49. State in what cases a Court of Equity directs an issue at law, or a case for the opinion of Common Law, and to what Courts the issue or case may be sent.

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. Detail the necessary steps to be taken to procure an adjudication in bankruptcy.

51. State what persons are, by the Bankrupt Law Consolidation Act, not to be deemed traders.

52. What must be the nature of the peti-

tioning creditors' debt, and when must it have accrued?

53. How and when are creditors' assignees chosen?

54. Can a creditor who has assigned his debt vote in the choice of assignees?

55. Is there any appeal from the decision or order of a Commissioner, and if so, to whom and in what form?

56. What are the principles of reputed ownership, and give instances in which property, whereof the bankrupt is reputed owner, does not pass to his assignees?

57. Under what circumstances do goods seized in execution pass to the assignees?

58. If after the property of an insolvent debtor is vested in the provisional assignee of the Insolvent Court, the insolvent is declared bankrupt, does the property so vested in the assignees of the Insolvent Court pass to the assignees in bankruptcy?

59. If in the above case the bankruptcy is afterwards superseded, in whom do the insolvent's goods vest?

60. If a verdict is obtained against a person before his bankruptcy subject to a reference, and the award is made after the bankruptcy, is the amount awarded proveable by the plaintiff?

61. What step is necessary to enable an executor who has become bankrupt to prove against his own estate?

62. If an executor carries on the trade of his testator for the benefit of the testator's estate, and is not otherwise a trader, is he (the executor) amenable to the Bankrupt Laws?

63. When goods are pledged by an agent who becomes bankrupt, for what sum can the owner of the goods prove under the bankruptcy, if he redeems them; and for what sum if he does not?

64. In an action by the assignees, what course must be pursued by the defendant who intends to dispute the petitioning creditor's debt, the trading and the act of bankruptcy?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE MAGISTRATES.

65. What is the general distinction between felony and misdemeanour?

66. What is homicide, and its different kinds?

67. What is burglary, and what are the hours within which it must be committed? and if the offence is committed in an adjoining building, occupied with a dwelling-house, what is necessary to constitute burglary?

68. Is a party liable to be indicted for concealing, retaining, and applying to his own use property casually found by him?

69. Can husband or wife be a witness for or against each other, in any and what cases?

70. Can the first husband be a witness against his wife, or the first wife against her husband, on an indictment for bigamy?

71. Is the stealing or destroying of title deeds a criminal offence or actionable?

72. Is it lawful to set a man-trap or spring-gun, or other instrument calculated to destroy

human life, or to inflict bodily harm in any and what place or places, and during what part of the twenty-four hours?

73. Is a witness in a criminal matter entitled before leaving home to be paid his travelling expenses, or for his loss of time?

74. Is any and what property qualification necessary for a person to become a county magistrate; and what are the steps necessary to be taken to get him appointed and to enable him to act?

75. What are the different modes by which a parochial settlement can be gained?

76. Before whom are questions of parochial settlement tried? and is a jury necessary? and can the legality of the decision be disputed in any and what manner?

77. Is the evidence of the mother of an illegitimate child of itself sufficient to obtain an order of filiation and maintenance on the putative father, or is any other and what evidence necessary?

78. Under what circumstances can persons playing musical instruments in the streets of the metropolis be required to desist?

79. Is an attorney liable to serve as a juror upon the trial of a criminal matter or upon a coroner's inquest?

RESULT OF THE EXAMINATION.

COMPARATIVE INCREASE OF LAWYERS.

THE printed list of Candidates for admission on the Rolls of Attorneys and Solicitors in Trinity Term appeared to be not less than 170, but these names included a large number who had given double notices, to provide against disappointment. The new Candidates were 114, but only 83 attended; of these 72 were passed;—one withdrew, and 10 were postponed.

The increase of this branch of the Profession is not therefore very alarming, especially as, according to the usual average, not more than two-thirds will enter into actual practice.

The increase, indeed, for several years, in the number of Attorneys falls considerably short of the extension of the wealth and population of the kingdom, and compared with the former progress of the Profession, is largely diminished.—The Bar, it appears, keeps full pace with the state of society, nay, far transcends the proportionate amount of litigation.

SELECTIONS FROM CORRESPONDENCE.

ARBITRATION COURTS.

THERE is one matter which operates most beneficially in various States on the Continent, and which probably may be useful in this country, and likely to prove of infinitely more value than the proposed Court of arbitrament.

Courts of Judicature abroad, I presume, conscious of the great difficulty in patent cases, refer the questions whether the matter is a new invention or not, or the like, to persons in the same trade, to which the proposed patent refers.

CIVIS.

TACKLING MORTGAGES.

A mortgages his freehold land not in a register county, to B., and subsequently executes a charge for a further advance to C., and then again to D. for a further sum of money. A. sells the land to E. paying off B.'s mortgage, altogether concealing the subsequent charges, receiving the purchase money, and paying off the first mortgage. In case notice had been given of the 2nd or 3rd mortgages to the 1st mortgagee, would it have been incumbent on him to give notice thereof to the purchaser?

Is A. liable to a criminal prosecution by indictment or otherwise, or to an action for the fraud committed by him, he having received the balance of the purchase money and applied it to his own use, without discharging the claims of C. and D. the 2nd and 3rd mortgagees?

A.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

In re Direct Exeter, Plymouth, and Devonport Railway Company, Ex parte Besley. March 13, 14, 15. May 29, 1851.

WINDING-UP ACT.—CONTRIBUTORY.—PROVISIONAL COMMITTEE-MAN.

B., after consenting upon the formation of a railway company to become a member of the provisions committee, wrote to the secretary requesting his name to be withdrawn, but which was not however done. He attended no meeting of the committee, until after it was resolved to abandon the undertaking, and after the debts and liabilities had been incurred, and he then attended meetings, at which resolutions were passed for the payment of contributions towards the expenses, which he paid, al-

though it appeared he had declined to accept the shares allotted to him: Held, (allowing a rehearing of the appeal motion before L. C. Cottenham from the decision of V. C. Knight Bruce, the House of Lords having recently decided against the liability under similar circumstances in *Cottle's case*, 2 H. & L. 647.) that B. was not liable to contribute.

Rolt and Karslake appeared in support of this petition, which sought a rehearing of the appeal motion from an order of Vice-Chancellor Knight Bruce, directing the name of Mr. Besley to be removed from the list of contributories to this company, and upon which Lord Chancellor Cottenham had reversed his Honour's decision, (reported 40 L. O. 121). The application was made upon the ground of the decision of the House of Lords in the simi-

lar case of *Cottle*, 2 H. & L. 647, and *Roberts*, 2 M'N. & G. 192; 2 H. & T. 391, in which those gentlemen had been held not liable to contribute.

Rosburgh took a preliminary objection, on the ground that there could be no appeal or rehearing of an order after the expiration of 21 days from the date of such order, and that no such rehearing of an order made on appeal could be heard within that period without a special case, upon notice to the respondents, citing *Sanderson's case*, 3 De G. & S. 66; *Byfield v. Provis*, 3 Myl. & C. 437; *Mousley v. Carr*, 3 Myl. & K. 205; *Deerhurst v. Duke of St. Albans*, 2 R. & M. 702.

The Lord Chancellor, however, having overruled these objections, the motion to remove the appellant's name from the list proceeded.

The company had been provisionally registered, and Mr. Besley's name added in Oct 1845, to the list of the provisional committee, and a committee of management was subsequently appointed, and the affairs of the company carried on. The parliamentary plans were deposited and the necessary notices given on 30th November, the shares being afterwards allotted, but the appellant in November became desirous of withdrawing, and declined to take any shares, and authorized the secretary to withdraw his name from the committee, which was, however, not done, and his name continued on the committee. On 21st December, he attended one of the meetings of the provisional committee when a resolution was passed for payment of 3s. per share on the shares allotted, which he paid, to the amount of 15l., and in March, 1846, he attended another meeting, at which another resolution was passed for payment of 10s. per share, he accordingly paid 50l., as also another contribution of the same amount, in accordance with a resolution passed in August, 1846, and which he paid, as his share of the expenses.

Cur. ad. vult.

The Lord Chancellor said, that as Mr. Besley had done no act nor attended any meeting of the provisional committee until it was resolved to abandon the undertaking, and the debts or liabilities had been incurred, he was not liable at law to any of the creditors of the company: *Reynell v. Lewis*; *Wyld v. Hopkins*, 15 M. & W. 517. Neither was a liability created by his payment toward the liquidation of the liabilities, as they had been made after the concern was abandoned, in order to protect himself from further demands, and were clearly made as a matter of favour of good faith and not as an admission of his liability: *Ex parte Roberts*, 2 M'N. & G. 192. And Mr. Besley was, therefore, within the decision of the House of Lords in *Cottle's case*, and his name must be removed from the list of contributories.

June 4.—*Hardey v. Dartnell and others*.—Appeal allowed from the late Vice-Chancellor Wigram.

— 4, 5, 6. — *Rodick v. Gandell*—*Cur. ad. vult.*

June 6.—*Ex parte Corporation of Bristol, in re Bristol Charities*—Master's report sent back to be reviewed, with leave for corporation to attend.

— 7, 9, 10.—*Briggs v. Penny*—*Cur. ad. vult.*

— 10.—*Kekewich v. Marker*—Appeal allowed from Vice-Chancellor Lord Cranworth.

Rolls' Court.

Morgan v. Morgan. April 25, 28, 29, May 27, 1851.

REQUEST.—CONSTRUCTION.—ENJOYMENT IN SPECIE.

A testator, by his will, after confirming an annuity to which his wife was entitled under their marriage settlement, and declaring that anything she should take under the will was in addition thereto, gave all his personal estate, which consisted inter alia of long annuities and leaseholds, to trustees on trust for payment of his debts, &c., and after payment thereof on trust for his wife, for life, and to pay any sum not exceeding 500l., to such of his children and in such portions as she should limit during her life, and in default of appointment, the said 500l. of which no direction should be made, among the children: Held, on a petition for rehearing of the cause in which a decree had been made, that the wife was not entitled to the enjoyment of the personal estate in specie, that such decision was right, but the decree was varied and the wife held entitled to the income arising from the leasehold estate, which had not been converted, from his death.

ROBERT MORGAN, by his will, dated 28th April, 1834, after reciting that his wife, Maria Morgan, was entitled under their marriage settlement to the annual sum of 210l. during her life, thereby confirmed the same, and declared that all she took under the will was in addition, gave all his personal estate and effects to H. G. T. Pulman and John Reeve, and the survivor of them, and the executors of such survivor, upon trust for payment of his debts, &c., and after payment thereof, upon trust for his wife, for life, and that they should during the life of his wife pay any sums not exceeding 500l. to such one or more of his children, and in such portions as his wife should direct, and in default of such direction, the said 500l. of which no direction should be made to be divided amongst his children.

The bill was filed on January 6, 1836, the testator having died in February, 1835, and on the hearing in July, 1838, it was referred to the Master to take the accounts.

It appeared that the testator's estate consisted *inter alia* of long annuities and of leasehold premises. And this petition was now presented on behalf of Robert Pulman and Maria his wife, for a rehearing on the ground that the plaintiff, Mrs. Pulman, was entitled to enjoy during her life in specie the rents of the leasehold estates and the dividends of the long annuities.

Roupell, R. Palmer, and Bird for the plaintiffs in the suit and respondents; *Lloyd and Greene* for the defendants and petitioners; *Walpole and Glasco* for defendant Reeve.

The Master of the Rolls, after taking time to consider the case, said, that it appeared by the general scope of the will the testator did not intend his personal estate should be enjoyed in specie by his wife during her life, and that therefore the conversion directed by the former decree was right. It would, however, be varied, as she was entitled to the income arising from the leaseholds which had not been converted, from the death of the testator.

June 4.—*Betts v. Barrow*—Stand over.

— 4.—*Attorney-General v. Wardens, &c., of Louth Grammar School*—Stand over.

— 5.—*Hall v. Hall*—Decree by arrangement for dissolution of partnership, and reference to the Master.

— 5, 6.—*Trye v. Corporation of Gloucester*—Cur. ad. vult.

— 7, 9.—*Browne v. Cross*—Bill dismissed with costs, against trustees for breach of trust.

— 9.—*Rowley v. Adams*—Judgment on petition under 13 & 14 Vict. c. 60, for appointment of party by Court to convey certain copyholds to purchasers.

— 9, 10.—*Rice v. Gordon*—Judgment as to costs.

— 10.—*Penruddock v. Hammond*—Part heard.

Vice-Chancellor Knight Bruce.

In re Royal Bank of Australia, ex parte Walker and others. May 13, 1851.

WINDING-UP ACTS.—LIBERTY TO INSPECT AND TAKE COPIES OF BOOKS, &c.—CREDITORS.

Held, that the Master has jurisdiction under the Winding-up Acts to make an order for liberty to the solicitor of parties whose claims to be admitted creditors had been filed, to inspect and take copies, at their expense, of the books and documents in the hands of the official manager.

THIS was an appeal on behalf of certain contributories to this company against an order of Master Richards, to whom the matter of the winding up thereof had been referred, granting leave to Mr. Alexander Dobie, of Lancaster Place, as the solicitor for certain parties whose claims to be admitted creditors had been filed, to inspect and take copies at their own expense of the books and documents in the custody of the official manager.

Bacon, in support, contended the creditors should file their bill in order to obtain the discovery sought; *Wigram and Selwyn*, for the creditors, were not called on; *W. T. S. Daniel*, for the official manager, did not oppose.

The Vice-Chancellor said, that if the company had been at present in existence and the creditors had filed their bill to establish their claims, they would have been clearly entitled

to the inspection now asked, unless the company swore in their answer the documents in question did not relate to their claim. The Master had discretion under the Winding-up Acts to make the order appealed against, and as it did not appear to be unreasonable, the appeal would be refused with costs.

In re Heath. May 28, 1851.

BANKRUPTCY LAW CONSOLIDATION ACT.—PRIVATE ARRANGEMENT.—THREE-FIFTHS OF CREDITORS.

Held, that the three-fifths required by the 12 & 13 Vict. c. 106, s. 216, to concur in the proposal for a private arrangement of debtors, who were the continuing partners of a firm, may be composed of creditors not exclusively of the arranging debtors, but may consist in part of creditors of them with their former partner.

THIS was a petition of appeal from the decision of Mr. Commissioner Balguy refusing to confirm an arrangement which had been acceded to by three-fifths of the creditors of the appellants, on the ground, as alleged by the appellants, that some of such creditors were creditors of a former firm, of which the arranging debtors were the continuing partners, and were not creditors of the arranging debtors only.

By s. 216 of the 12 & 13 Vict. c. 106, it is enacted that, "at such second sitting, or at any adjournment thereof, the creditors may also prove their debts; and if three-fifths in number and value of those who have proved debts to the amount of 10*l.* shall agree to accept such proposal as was assented to at the first sitting, the terms thereof shall be reduced into writing, and the creditors shall sign the same; and such resolution or agreement (subject to such confirmation as is hereinafter mentioned) shall thenceforth be binding and of full force, as well against such petitioning trader, as against all persons who were creditors at the date of his petition, and who had notice of the said several sittings of the Court; and the Court, if it shall think the same reasonable and proper to be executed, after hearing such creditors, by themselves, their counsel or attorneys, as may desire to be heard either for or against such resolution or agreement, shall approve and confirm the same, and cause it to be filed and entered of record."

Swanston, in support of the appeal; *Russell, Prior, and Hobhouse*, contra, on the ground that the Commissioner had objected to the terms of the arrangement only.

The Vice-Chancellor said, that the three-fifths required by the act might be composed of creditors not exclusively of the arranging debtors, but might consist in part of the creditors of them with their former partner; and the petition was directed to stand over, with leave to the petitioner to apply to the Commissioner, but without prejudice to the exercise by the Commissioner of his discretion as to the terms of the arrangement proposed.

June 4.—*Attorney-General v. Croft*—Arrangement of minutes of decree.

— 4.—*Lock v. De Burgh*; *Lord Burghersh v. De Burgh*—Declaration that estate of tenant for life was entitled to proportion of rents down to his decease under the leases granted after the 4 & 5 W. 4, c. 22, and reference as to amount, if not arranged.

— 4.—*Ex parte Johnson, in re Cross*—On petition of official assignee, proceedings at law restrained.

— 4.—*Ex parte Sturt, in re St. Alban's Bank*—Stand over for service of petition on official assignee.

— 5.—*In re Oundle Union Brewery Company, ex parte Yorke*—Stand over.

— 5.—*Cantelo v. Butters*—Injunction granted to restrain infringement of patent.

— 6.—*Shipton v. Rawlins*—Stand over.

— 7.—*In re Trusts of Masselin's will*—Stand over, with liberty to file claim for administration.

— 4, 9, 10.—*Jones v. Price*—Part heard.

Vice-Chancellor Lord Cranworth.

In re Direct Birmingham, Oxford, Reading, and Brighton Railway Company, ex parte Upfill. May 2, 28, 1851.

WINDING-UP ACTS.—CONTRIBUTORY.—MASTER'S JURISDICTION TO MAKE CALLS.

Held, that the Master has not jurisdiction under the 11 & 12 Vict. c. 45, s. 83, or the 12 & 13 Vict. c. 103, s. 28, to make an order for calls on the contributories until he has decided in respect of which debts each contributory is liable at law; and the order of the Master for a call before such liability had been ascertained was accordingly discharged on appeal.

THIS was a motion to reverse an order of Master Brougham, to whom the matter of the winding up of this company was referred, declaring Mr. Upfill liable to a call of 2*l.* 12*s.* 6*d.* per share on the 100 shares of which he was the holder, towards the expenses of the company.

Kolt and *Daniel* in support, on the ground that the shareholders could not be called on to contribute rateably for all the expenses incurred, but only for such as each had actually authorised.

Bethell and *Roxburgh*, contra, contended that the Master had power to make such calls on the contributories, who were all equally liable.

Cur. ad. vult.

The Vice-Chancellor said, that the power of the Master to make calls depended on the 10 & 11 Vict. c. 45, s. 83,¹ and the 12 & 13 Vict.

c. 108, s. 28,² and he had therefore power, when the list of contributories was made out, to direct calls to be made for such a sum as should appear necessary, and he should think proper, on any contributories to the extent to which they would be liable at law, as limited by the 83rd section of the first act. The Master could not, therefore, make the call until he had decided in respect of which debts each contributory was liable. The order of the Master for the call must therefore be discharged, and no calls be made until it had been ascertained in respect of which debts the appellant was liable.

June 4.—*Kennet and Avon Navigation Co. v. Witherington*—Injunction granted to restrain interference with or damage to water dam, with liberty to bring action.

— 5.—*In re Direct Birmingham Oxford, and Reading Railway Company, ex parte Hunter*—Master's order for call discharged for costs of winding up and of official manager.

— 5.—*Ripon v. Wawn*—Injunction granted to restrain defendant from excavating mines.

— 5.—*North Staffordshire Railway Company v. Glover*—Injunction dissolved.

— 6.—*Fletcher v. Moore*—Judgment on construction of will.

appear to be insufficient, and also after all the assets of the company shall have been wholly exhausted, it shall be lawful for the Master from time to time to make calls on the contributories, or on such individual contributories or classes of contributories, as he may think proper, (but so far only as such contributories respectively shall be liable at law or in equity to pay the same,) as well for raising such amount as may be necessary to pay the debts or liabilities or any of the debts or liabilities of such company, or any part thereof, or the costs, charges, and expenses of winding up the same, as also for the purpose of adjusting and settling the respective claims of contributories upon each other, or upon the company, whether such claims shall have arisen since or before the date of the petition for dissolution," &c.

² Which, after repealing section 84 of the 11 & 12 Vict. c. 45, provides "in lieu thereof, that, when the Master shall think proper to raise any money by means of a call, he shall make such call from time to time upon the contributories of the company, or any of them, appearing for the time being on the list of contributories, although it may then be under consideration, or uncertain, whether other persons ought or ought not to be included in the list; and in making any such call it shall be lawful for the Master to fix such an amount per share for the same as shall in his judgment be likely to supply and bring in the whole sum for the time being intended to be raised, after taking into consideration the probability that some of the contributories upon whom the said call shall be made should partly or wholly fail to pay their respective proportions of the same."

¹ By which it is enacted, that "at any time before the whole of the assets of such company shall have been collected or converted, and if the assets remaining to be collected or converted shall not be capable of being immediately realised, although such assets may not

June 6.—*Marks v. Solomons*—Petition refused for investment of monies in loan societies in the funds.

—7, 9.—*Preston v. Liverpool and Newcastle-upon-Tyne Junction Railway Company*—Stand over.

—10.—*Davis v. Greenlaw*—Bill dismissed with costs.

—10.—*Monro v. Proctor*—Reference to inquire as to parties entitled to certain commonable rights when Local Enclosure Act passed, and for apportionment of money paid by railway company for compensation amongst such parties.

Vice-Chancellor Turner.

June 5.—*Moat v. Morrison*—Motion refused without costs, for receiver of outstanding debts and effects of partnership.

—4, 6, 7, 9, 10.—*Beadon v. King*—Part heard.

Court at Queen's Bench.

Pugh and another v. Carttar. May 13, 1851.

ACTION OF COVENANT.—PLEA OF BANKRUPTCY.—PAYMENT OF DEBTS OUT OF PROFITS OF OFFICE OF CORONER.—VALIDITY.

Held, allowing a demurrer to a plea of bankruptcy, that a covenant was valid whereby a sum of 20 per cent. was agreed to be paid out of and from the clear profits of the fees received by the defendant in his office of coroner, to the plaintiffs in trust for his creditors, for the next succeeding nine years, and might be declared on notwithstanding the bankruptcy, inasmuch as the sum to be proved under the bankruptcy could not be estimated, and the payments were to be made out of the profits of the office, which profits could not go to the assignees.

THIS was a demurrer to the defendant's plea of discharge under the 12 & 13 Vict. c. 106, s. 177, to this action, which was brought by the trustees under an indenture whereby the defendant covenanted to pay over to the plaintiffs in trust for certain creditors therein named the sum of 20 per cent. out of and from the clear profits of each and every fee received by him for every inquest held by him during the next nine years succeeding the date thereof as one of the coroners for the county of Kent, to recover the sum due under the covenant.

Pearson, in support of the plea, on the ground the contract was illegal and void under the 5 & 6 Edw. 6, c. 16, s. 2, and the 49 G. 3. c. 126, s. 3, and at common law, as relating to the sale of an office, or part of an office, citing *Palmer v. Bate*, 2 Brod. & B. 673; *Davis v. Duke of Marlborough*, 1 Swanst. 74; and on the ground that the debt was a "debt payable upon a contingency," the value of which might be ascertained, and to which, therefore, the bankruptcy was a discharge under the 12 & 13 Vict. c. 106, s. 177, re-enacting the 6 G. 4, c. 16, s. 56.

Bovill contra, in support of the demurrer, cited *Sterry v. Clifton*, 19 Law J., C. P. 237.

The Court said that the contract was merely a personal covenant to pay the plaintiffs a sum measured by 20 per cent. upon the clear profits of his office, and was not a charge on the office, and was therefore valid under the case of *Sterry v. Clifton*, cited at bar. As to the plea of bankruptcy, it was bad, inasmuch as it was impossible to calculate the value of the contingent liability, for which the plaintiffs were to prove under the bankruptcy, and as it was a sum to be paid out of the profits of the office to accrue after the bankruptcy which could not pass to the assignees. The judgment would therefore be for the plaintiffs, and the demurrer be allowed.

June 4.—*Cort and others v. Nottingham, Boston, Ambergate, and Eastern Counties Junction Railway Company*—Rule discharged for new trial.

—5.—*Coglan v. Botting and others*—Rule refused for allowing to plaintiff of costs in action.

—2.—*Armistead v. Wilde*—Rule discharged for new trial on the ground of misdirection.

—6.—*Sims and another v. Marryat*—On special case, judgment for plaintiffs.

—6.—*Regina v. Lancashire and Yorkshire Railway Company*—Rule nisi for mandamus to complete branch line.

—6.—*Chelsea Waterworks Company v. Rowley*—Cur. ad. vult.

—4, 7.—*In re the Award between the Great Western Railway Company and the Inhabitants of Tilehurst*—Cur. ad. vult.

—7.—*Ex parte Oldham and United Parishes Assurance Company*—Rule nisi for mandamus on secretary or president of company to sign notice convening general meeting, pursuant to requisition.

—7.—*Regina v. Tithe Commissioners of England and Wales*—Leave to amend return to mandamus on payment of costs.

—7.—*Regina (Ex parte Dangerfield) v. Griffiths*—Rule nisi for quo warranto to clerk of board of guardians.

—9.—*In re Flewker (of Derby)*—On application to strike attorney off the roll for misconduct, order for suspension from his practice for one month, and to pay costs of application.

—9.—*Regina v. Governors, &c. of St. Mary, Newington*—Rule discharged with costs for mandamus on defendants to hold vestry under local act for election of governors, &c.

—9.—*Rose v. Manser*—Part heard.

—10.—*Shrewsbury and Birmingham Railway Company v. London and North Western Railway Company, and Shropshire Union Railway and Canal Company*—On demurrer, leave to amend declaration and for defendant to withdraw his plea.

—10.—*Gruntham Canal Company v. Ambergate, Nottingham, Boston and Eastern Junction Railway Company*—Judgment for defendants.

Queen's Bench Practice Court.

June 4.—*Regina v. Justices of Kent*—Rule nisi for *certiorari* to remove conviction under the Game laws, and order of sessions confirming same.

— 4.—*In re Cohen*—*Cur. ad. vult.*

— 4, 5.—*Ex parte Hulse*—Application granted to put in bail.

— 7.—*Regina v. York and North Midland Railway Company*—Rule nisi for mandamus on company to complete railway.

— 7.—*Regina v. Coventry, Nuneaton, Birmingham, and Leicester Railway Company*—Rule nisi on defendants to complete railway.

— 9.—*In re Arbitration between Shaw and Sims and another*—Rule refused to set aside award.

— 10.—*Regina v. Askew*—Rule nisi for habeas corpus to bring up prisoner convicted under Masters' and Servants' Act.

— 10.—*Gell v. Fowler*—Rule nisi for new trial on the ground of surprise.

Court of Common Pleas.

James v. Whitbread. May 7, 29, 1851.

DEED OF ASSIGNMENT FOR BENEFIT OF CREDITORS.—VALIDITY OF PROVISION FOR CARRYING ON TRADE.—INTERPLEADER ISSUE.—NEW TRIAL.

Under a deed of assignment for the benefit of creditors, the debtor, who was a beer-shop keeper, appointed a trustee to manage the business of the shop until a purchaser could be found for it: Held, that the deed was not thereby rendered void, inasmuch as it was merely incident to winding up the affairs of the debtor. A rule was therefore refused for a new trial of an interpleader issue between such trustee as plaintiff and judgment creditors, upon the ground of misdirection, but the presiding judge being dissatisfied with the verdict, a rule was granted on payment of costs.

THIS was a motion for a rule nisi for a new trial on the ground of misdirection and of the verdict being against evidence, of an interpleader issue as to certain goods which had been seized by the defendants who supplied one James Ellis, the keeper of a beer-shop at Luton, under an execution, issued on 4th March, upon a judgment obtained by them for 150*l.*, the balance due to them. It appeared that Ellis had executed a deed of assignment, dated Feb. 10, for the benefit of his creditors under which the plaintiff was appointed trustee to manage the business until a purchaser could be obtained, but the seizure having been made, this issue was directed under the Interpleader Act, and on the trial before Mr. Justice Maule, the plaintiff obtained a verdict. The learned judge having directed the jury that the deed was not void by reason of this trust, the present motion was made.

M. Chambers, in support.

The Court said, that the deed was valid as only enabled the trustee to wind up the

affairs of the debtor and was merely subsidiary thereto, and there was therefore no misdirection, the rule laid down in *Owen v. Boddy*, 5 A. & E. 28, being inapplicable to the present case. Upon the other ground, as Mr. Justice Maule was not satisfied with the verdict, there would be a new trial on payment of costs.

June 4.—*Butt and another v. Great Western Railway Company*—Leave to amend replication, on payment of costs.

— 5.—*West London Railway Company v. London and North Western Railway Company*—Judgment on construction of covenant in lease.

— 7.—*Dunkley v. Farris*—Rule absolute to set aside writ of summons and subsequent proceedings with costs.

— 6, 9.—*Robinson and wife v. Marquis of Bristol and others*—Judgment for defendants.

— 9.—*Arden v. Goodacre*—Rule absolute for new trial on the ground of misdirection.

— 10.—*Richardson v. South Eastern Railway Company*—On demurrer to declaration, judgment for plaintiff.

Court of Exchequer.

Read v. Legard. May 30, 1851.

HUSBAND'S LIABILITY FOR NECESSARIES SUPPLIED TO WIFE.—ALTHOUGH LUNATIC.

Held, that the obligation of a husband on his marriage to provide his wife with necessaries, and his liability on the contracts entered into by her on his default or refusal so to provide the same, is not determinable by his becoming a lunatic; and a rule was therefore discharged to set aside a verdict for the plaintiff, and enter a nonsuit in an action brought for such necessities, although at the time of their being supplied the husband was insane.

THIS was a rule nisi to set aside the verdict for the plaintiff, and enter a nonsuit in this action which was brought to recover for necessities supplied to the wife of the defendant, who it appeared was a lunatic at the time they were supplied. On the trial before Mr. Baron Martin, his lordship directed the jury that the defendant was liable notwithstanding his lunacy, and the plaintiff obtained a verdict, subject to leave to move for this rule.

Watson and Ball shewed cause; *Hugh Hill* in support.

The Court said, that upon a marriage a man undertook to provide necessities to support his wife, and if he omitted or refused to do so, he impliedly authorized her to procure them. And the husband having become a lunatic and incapable of managing his own affairs, could not revoke the obligation which he had contracted when he was of sane mind on his marriage. The rule must therefore be discharged.

June 4.—*Hudson v. Roberts*—Rule discharged to enter nonsuit.

— 4.—*Stocks and another v. Mayor, &c., of Halifax—Cur. ad. vult.*

— 4.—*Callow v. Jenkinson*—On demurrer, leave to amend replication.

— 5.—*Smith v. Howell*—Rule absolute to reduce damages to nominal amount.

— 5.—*Thoms v. Taylor*—Rule discharged to set aside verdict for plaintiff and for new trial.

— 7.—*Heneage v. Galland; Tomline v. Galland*—Rules absolute on defendant for payment of costs of trial of feigned issues.

— 9.—*Drew and others v. Collins*—On demurrer to plea in bar of deed of composition for benefit of creditors under 12 & 13 Vict. c. 106, judgment for plaintiffs, the plea not being in conformity with section 224, with leave to amend if so advised within a week.

— 10.—*Blair v. Jones*—Rule absolute for revival of taxation of costs.

— 10.—*Trumpler v. Lockett*—Rule discharged for new trial, on the ground of verdict being against evidence.

Court of Exchequer Chamber.

Regina v. Hill. May 3, 1851.

WITNESS.—ADMISSIBILITY OF, ALTHOUGH LABOURING UNDER MENTAL DELUSION.

Held, that a person *non compos mentis* having mental delusions, and although resident in a lunatic asylum, is competent as a witness on an indictment, if it appear to the judge he understands at the time the nature and sanction of an oath, and the question of his credibility is a question for the jury.

An objection had been taken to a witness in support of this indictment, named Donelly, who was a resident in a lunatic asylum, on the ground that he was not admissible as being *non compos mentis*. It appeared from the evidence of medical men that the witness laboured under a mental delusion that he was possessed with evil spirits, but he was on other points perfectly sane, and on the trial at the Old Bailey, Mr. Justice Coleridge, upon it appearing he had very correct notions of the nature of an oath, admitted his evidence.

Collier, in support of the objection; *Sir F. Thesiger, Clarkson, and Bodkin*, contra, were not called on.

The Court said, that the rule had been most correctly laid down in a recent case by Mr. Baron Parke, that supposing a delusion to exist in the mind of the witness, it was for the judge to say whether at the time the proposed witness possessed a proper sense of religion and understood the sanction of an oath, and then for the jury to determine what credit was to be given to his testimony. The witness might be cross-examined to show his state of mind, and evidence adduced to prove no faith should be put in him. It would be highly inexpedient in its consequences if a different rule existed, in regard to lunatic asylums, where it often happened a number of persons were placed under the care of one man, if they could not give evidence of any outrage committed on themselves. The evidence was therefore properly admitted, and the conviction must be affirmed.

June 7.—*Regina v. Hogan—Cur. ad. vult.*

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Bankruptcy and Insolvency.

[Concluded from page 108, ante.]

DISCHARGE OF DEBTOR.

2. *Sum recovered not exceeding 20l.—Drawing up rule.*—A writ of summons in debt was indorsed for a sum under 20l. In the declaration the sum claimed was above 20l. Judgment was signed by default, and a *ca. sa.* issued. The sum inserted in the judgment and in the mandatory part of the writ was the sum claimed in the declaration; but the writ was indorsed to levy 12l. only, being the amount of debt and costs.

Held, that this was a case in which "the sum recovered" did not exceed 20l. within the meaning of the 57th section of 7 & 8 Vict. c. 96; and the Court accordingly set aside the writ of *ca. sa.*, and ordered the defendant to be discharged out of custody.

A rule nisi to set aside the writ of *ca. sa.*, and to discharge the defendant out of custody, upon the above ground, need not be drawn up, upon reading the writ of *ca. sa.* *Walker v. Hewlett*, 6 D. & L. 732.

ESTOPPEL.

In pais.—Assignees.—In trover by the assignees of a bankrupt against a sheriff, for the conversion of the bankrupt's goods, seized under a *fi. fa.* against C. and D., it appeared that, immediately before the seizure, the bankrupt told the officer that the goods were the property of C., and, immediately afterwards, he contradicted that statement, and said they were the goods of D. The jury found, that the goods were in reality the bankrupt's; but also, that he represented the goods to the officer as the goods of C., so as to induce the officer, by that false representation, to seize them: Held, that, under the plea of not possessed, this finding did not estop the bankrupt, and the plaintiffs as assignees, from complaining of the seizure of the goods as their own. *Freeman v. Cooke*, 2 Exch. R. 654.

FINAL ORDER.

1. *Of protection.*—Plea, in assumpsit, that, after the accruing, &c., and before the commencement, &c., to wit, 16th June, 1843, defendant, not being a trader within the meaning, &c., and having resided 12 months in London, under and by virtue and according to the directions of stat. 5 & 6 Vict. c. 116, duly pre-

sented his petition for relief to the Court of Bankruptcy in London for protection from process, with a full and true schedule of his debts annexed, which schedule and petition were pursuant to and duly contained all the matters in that behalf mentioned in the statute; and the petition was duly and according to the statute, filed of record in that Court; and such proceedings were thereupon there had pursuant to the statute and in all respects conformably thereto; that afterwards, and before the commencement, &c., to wit, 28th August, 1843, according to the form of the statute and pursuant thereto, a final order for protection and distribution was made by a Commissioner duly authorized in that behalf, *that is to say*, such final order as aforesaid was made by F., one of the Commissioners of the said Court, duly authorized in that behalf, for the protection of the person of defendant from all process, and for vesting the estate and effects of defendant in A., one of the official assignees of the Court of Bankruptcy; that the debt in the declaration arose before the filing of the petition, and that the order was still in force.

On special demurrer:

Held, a good plea under section 10, though it did not state a vesting in a creditors' assignee as well as the official assignee, according to section 4, nor account for such assignee not being mentioned. And this, assuming that the part following *that is to say* could not be rejected as surplusage. *Lewis v. Harris*, 11 Q. B. 724.

Cases cited in the judgment: *Cook v. Henson*, 1 Com. B. 908; *Nicholls v. Payne*, 7 M. & G. 934, 5.

2. *Cause of action accruing before operation of statute*.—A defendant may plead a final order granted under the 5 & 6 Vict. c. 116, though the cause of action accrued before the statute came into operation. *Laurie v. Bendall*, 12 Q. B. 634.

3. *Protection and distribution*.—*Seizure under fi. fa.*—Where the goods of an insolvent had been seized under a writ of *fi. facies* issued upon a judgment signed against him, and between the date of the judgment and the issuing of the writ of *fi. fa.*, he had obtained an order for protection and distribution, under the 5 & 6 Vict. c. 116, the Court, upon motion, set aside the writ on terms. *Jacobs v. Hyde*, 2 Exch. R. 508; *Platel v. Beville*, ib., 511; *Turner v. Pulman*, ib., 513.

4. *Of protection*.—To an action of debt the defendant pleaded that, after the passing of the 5 & 6 Vict. c. 116, and before the 7 & 8 Vict. c. 96, and before the commencement of the suit, a petition for protection from process was duly, according to the form of the statute, presented by the defendant to the Court of Bankruptcy, and afterwards filed in that Court; and that thereupon, and after the passing of the said secondly-mentioned act, to wit, on, &c., a final order for protection and distribution was made in the matter of the said petition by J. E., Esq., a Commissioner of the said Court

duly authorized; and that the said debts, &c., accrued before the issuing of the said petition. Verification: *Held*, good, on special demurrer. *Jacobs v. Hyde*, 2 Exch. R. 508; *Platel v. Beville*, ib., 511; *Turner v. Pulman*, ib., 513.

Case cited in the judgment: *Cook v. Henson*, 1 C. B. 908.

4. *Protection*.—*Allegation of debt being in schedule*.—The final order for protection under the 7 & 8 Vict. c. 96, is a protection only in respect of debts named in the insolvent debtor's schedule; therefore to a declaration in debt, a plea that after the accruing of the debt, the defendant petitioned the Insolvent Debtor's Court, and that thereupon a final order for protection was made; and that the debt was contracted before the filing of the petition; was, upon general demurrer, held bad, for not alleging that the debt was named in the schedule. *Phillips v. Pickford*, 1 L. M. & P. 136.

5. *Operates in bar of action*.—*Semble*, that in respect of debts named in the schedule, the final order operates not only as a protection to the person of the debtor from all process, but also as a bar to an action for such debts. *Phillips v. Pickford*, 1 L. M. & P. 136.

Cases cited in the judgment: *Platel v. Beville*, 2 Exch. R. 508, 511; *Cook v. Henson*, 1 C. B. 908.

FRAUDULENT PREFERENCE.

As against creditors.—*Held*, that in order to render a preference on the eve of bankruptcy valid, it is not necessary that there should be a threat or pressure, with an immediate power of rendering it available by taking legal steps. To defeat a payment or transfer made to a creditor, the assignees must show it to be fraudulent as against the body of creditors, by proving it to be voluntary on the part of the bankrupt, and in contemplation of his bankruptcy; and if it is made in consequence of the act of the creditor, it is not voluntary. *Van Casteel v. Booker*, 2 Exch. R. 691.

See *Composition Deed*.

GUARANTEE.

Contingent debt.—Under the 6 Geo. 4, c. 16, s. 56, a claim on a guarantee for a sum certain, when due, is proveable as a debt, and before it is due is proveable as a debt due on a contingency.

A. & Co. bought certain wools of B. & Co., payable by the buyers' acceptance at eight months; but before the sale was completed, B. & Co. requiring some security in consideration of 11. per cent., obtained the following instrument from C., signed by him:—"Gentlemen,—In consideration of 11. per cent. I hereby guarantee the due and correct payment of half the amount of 136 bales of wool, sold to Messrs. A. & Co. as per contract," &c. Before the bill given by A. & Co. fell due, a fiat in bankruptcy issued against C., and shortly afterwards against A. & Co., and no dividend was declared under either fiat. The bill was duly presented, and remaining unpaid: *Held*, that the claim

arising out of the guarantee was proveable under the fiat against C. : *Held*, also, that the instrument was a guarantee. *In re Willis*, 4 Exch. R. 530.

Cases cited in the judgment : *Ex parte Myers*, Mont. & B. 229 ; *Ex parte Minet*, 14 Ves. 189.

JUDGMENT CREDITOR.

Petitioning creditor.—Discharge of bankrupt.—The plaintiff recovered judgment against the defendant in the Court of Exchequer. Afterwards, on the 1st of January, the defendant, being in custody at the suit of W., petitioned the Insolvent Court, and inserted in his schedule the plaintiff's judgment debt and costs. On the 12th, the plaintiff lodged a detainer against the defendant upon the judgment. On the 25th, he withdrew the detainer, and petitioned the Court of Bankruptcy for adjudication of bankruptcy against the defendant, who was, on the same day, adjudged bankrupt. On the following day, he was discharged by the Insolvent Court. On the 23rd of July, the Court of Bankruptcy granted a certificate under the 257th section of the 12 & 13 Vict. c. 106, certifying that the plaintiff was a judgment creditor for 714 7s., which was the amount of the judgment, minus the costs. The defendant having been taken in execution upon a *ca. sa.* issued out of this Court upon that certificate, *held*, upon motion for his discharge,

First, that the defendant's discharge from arrest upon the judgment did not preclude the plaintiff from arresting him upon the certificate.

Secondly, that the defendant was not protected from such arrest by the 1 & 2 Vict. c. 110, s. 90.

Whether a judgment creditor who has taken his debtor in execution is a good petitioning creditor to support a commission of bankruptcy, *quære*.

But, whether he is or not, *held*,

Thirdly, that where no steps have been taken to supersede the proceedings in bankruptcy, the Commissioner's certificate under sect. 257 must be treated as valid.

Fourthly, that the 257th section of the 12 & 13 Vict. c. 106, applies to creditors who have obtained judgment before proof as well as to those who have not.

Fifthly, that the 40th section of 1 & 2 Vict. c. 110, keeps alive the proceedings in the Insolvent Court only for the purpose of reaching the future estate of a bankrupt who obtains his certificate, but has no operation when the bankrupt does not obtain his certificate.

Sixthly, that the 12 & 13 Vict. c. 106, transfers all questions as to the bankrupt's discharge to the Court of Bankruptcy. *Walker v. Edmondson*, 1 L. M. & P. 772.

MESSENGER.

Acting in obedience to warrant.—A messenger of the Court of Bankruptcy, who acting under a warrant to take the goods of A. takes the goods of B., is not protected by the 107th

sect. of the Bankrupt Law Consolidation Act, although he acted *bond fide* and in the reasonable belief that he was acting in obedience to his warrant. *Munday v. Stubbs*, 1 L. M. & P. 75.

Case cited in the judgment : *Parton v. Williams*, 3 B. & A. 330.

NOTICE OF BANKRUPTCY.

To defeat execution.—Notice to execution creditor's attorney.—Attorney's clerk.—*Held*, under stat. 2 & 3 Vict. c. 29, s. 1, (see now stat. 12 & 13 Vict. c. 106, ss. 1, 133), that a *bond fide* execution is defeated by bankruptcy, if notice of an act of bankruptcy be served on the plaintiff's attorney at any time, however short, before seizure; though the notice is served in London, and the writ has been sent into a bailiwick in the country.

But that a mere delivery at the attorney's chambers, as in the case of notices in a cause, is not sufficient : and that the service must be on the attorney himself, or a clerk so far entrusted with the management of his business as to have the power of acting on such a communication in his absence.

And, therefore, that an announcement of bankruptcy made at the attorney's office, to a person who had lodged the writ of execution with the sheriff, but was not further described in evidence than as clerk to the attorney, did not affect the client, the execution creditor. *Pike v. Stephens*, 12 Q. B. 465.

Case cited in the judgment : *Rothwell v. Timbrell*, 1 Dowl. P. C., N. S., 778.

See *Act of Bankruptcy*.

PENSION.

Commissioner of Bankrupts.—A pension granted to a Commissioner of Bankrupts under the 5 & 6 Vict. c. 122, is not within the exception of the 56th section of the Insolvent Act, 1 & 2 Vict. c. 110, but will, under that act, pass to his assignees. *Spooner v. Payne*, 4 Exch. R. 138.

PETITION FOR PROTECTION.

1. *Insolvent having no property.*—Under the Insolvent Debtors' Act, 5 & 6 Vict. c. 116, ss. 1, 4, it is not necessary that a party petitioning for an order of protection should have any property for distribution among creditors. *Laurie v. Bendall*, 12 Q. B. 634.

2. *Plea to an action of indebitatus assumpsit for wages as a hired servant, and on an account stated, that, after the accruing of the cause of action, and before the passing of the 7 & 8 Vict. c. 96, the plaintiff had presented a petition for protection from process under the 5 & 6 Vict. c. 116, s. 1 ; and that an official assignee had been appointed, in whom his estate and effects were vested. The plea set out all the facts necessary to render the order valid under that section : Held, on demurrer, that the plea was a sufficient answer to the action.*

Held, on special demurrer, that it was not necessary that the plea should contain a posi-

tive averment that the plaintiff had creditors, or that the schedule which he presented contained the debt sued for.

Nor that it should negative that the suit was brought on behalf of the official assignee, and with his consent.

Nor that the notice of the plaintiff's intention to present the petition should be stated to have been given after the passing of the act; it being expressed to be given "according to the schedule to the said first-mentioned act annexed, and according to the true intent and meaning of the said first-mentioned act."

Nor that the time when the matter of the petition was to be heard, should be stated to have been advertised in the *London Gazette*, &c., "one month at the least" after the date of the notice.

Nor that the order of the Court of Bankruptcy, which appointed the commissioner who granted the order for protection, should be stated to have been approved of by the Lord Chancellor. *Sayer v. Dufaur*, 5 D. & L. 313.

3. The stat. 5 & 6 Vict. c. 116, s. 1, takes away from a party, presenting a petition for protection from process under that statute, the right to sue for an outstanding debt, and confers it, till final order, on the official assignee. *Sayer v. Dufaur*, 5 D. & L. 313.

Case cited in the judgment: *Wright v. Fairfield*, 3 B. & Ad. 727.

POOR'S RATE.

Distress warrant.—*Certificate.*—A sum assessed by way of poor-rate is "a claim or demand" proveable under a commission of bankruptcy, under the 5 & 6 Vict. c. 122, and a certificate under that statute is therefore a bar to any subsequent proceedings under the stat. 43 Eliz. c. 2, to levy the amount by distress and sale of the bankrupt's goods. *Erparte Churchwardens, &c., of Burwash*, 1 L. M. & P. 60.

PRISONER.

Classification in Queen's Prison.—The 11 & 12 Vict. c. 7, s. 2, enacts, that from and after the passing of the act, the first class of prisoners in the Queen's Prison shall be composed of, among other persons, debtors refusing to file a schedule of their property when ordered to do so.

Held, that an insolvent debtor who had been ordered to file his schedule before the passing of the act was properly placed in the first class. *Stead v. Anderson*, 1 L. M. & P. 109.

PROOF BY INDORSEE.

Bill of exchange.—The drawer of a bill of exchange, who has paid the amount to an indorsee after a fiat in bankruptcy issued against the acceptor, may sue the latter upon the bill, before he has obtained his certificate, notwithstanding the indorsee has proved under the fiat. *Walker v. Pilbeam*, 4 C. B. 229.

Case cited in the judgment: *Mead v. Braham*, 3 M. & S. 91.

PROTECTION FROM ARREST.

Debt arising in actions for assault committed

by wife.—Section 112 of the 12 & 13 Vict. c. 106, which takes away protection from bankrupts for debts arising from judgments in actions of assaults, applies only to assaults committed by the husband, and not those committed by the wife. Per *Alderson*, B. *Larkin v. Marshall*, 1 L. M. & P. 186.

See *Final Order ; Petition for Protection*.

SCOTCH BANKRUPT.

The defendant, who carried on business in partnership in Scotland, was arrested in England on the 17th of March, 1848, upon a capias issued under the 1 & 2 Vict. c. 110, s. 3. On the 20th of March, the Lord Ordinary made an order on the petition of the partnership firm, sequestrating their estate, appointing two meetings of creditors, and granting to the defendant a "warrant of protection" "against arrest or imprisonment for civil debt." *Held*, that this was a warrant of protection from arrest, under the 13th section of the 2 & 3 Vict. c. 41, (Scotch Bankrupts' Act,) and not a warrant of liberation under the 17th section; and that as the defendant was in custody at the time it was granted, it was inoperative to discharge him. *McGregor v. Fiskin*, 5 D. & L. 722.

See *Arrest*.

SHERIFF.

Attachment.—*Feigned issue.*—Although the 5 & 6 Vict. c. 98, s. 31, enacts, that if a debtor in execution escape, the sheriff shall be liable only to an action upon the case for the damage sustained by the plaintiff, the Court will grant an attachment against the sheriff for returning the escape.

The Court, however, will, in such a case, measure the amount of the fine to be imposed upon the sheriff, by the damages sustained.

Where, therefore, an attachment was issued against the sheriff for returning an escape, the Court gave the plaintiff liberty to bring an action against the sheriff to ascertain the amount of damage, and stayed the proceedings upon the attachment in the meanwhile. *Regina v. Sheriff of Leicestershire*, 1 L. M. & P. 414.

TRADER.

Judge's order by consent.—*Filing.*—A judge's order given by consent by a trader not afterwards becoming bankrupt, is valid as against him, although not filed in pursuance of the 12 & 13 Vict. c. 106, s. 137.

Semble, that that section makes the judge's order "null and void" only in the event of the trader becoming bankrupt, but even then, not as against him. *Bryan v. Child*, 1 L. M. & P. 429.

TRADING.

Or owing less than 300l.—A plea containing the averments required by section 10 of the 5 & 6 Vict. c. 116, is good, though it do not state that the party was not a trader, or, being a trader, was indebted in less than 300l. *Laurie v. Bendall*, 12 Q. B. 634.

WARRANT.

See *Adjudication*.

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SATURDAY, JUNE 21, 1851.

CHANCERY ADMINISTRATION IMPROVEMENT BILL.

HAVING expressed our participation in the very general feeling of disappointment with which the scheme, some time since propounded by Lord John Russell, for improving the administration of justice in the Court of Chancery, was received by the legal profession and the public, it is but just to state, that the alterations his Lordship has recently proposed—alterations at once extensive and important—appear to be conceived in a more practical spirit, and may be regarded, for the most part, as decided improvements. An increase of judicial strength was required in the highest branch of the Court of Chancery, and the exigency is now about to be met in a manner the most direct and obvious. Instead of impairing the efficiency of two Courts, by giving the Lord Chancellor the occasional assistance of the Master of the Rolls, and one of the Common Law Judges, in the Court of Chancery, as originally suggested, two new judges are to be appointed, constantly to assist the Chancellor in appeals from the Master of the Rolls and any of the Vice-Chancellors, and, by sitting in his absence, to prevent any interruption of the ordinary business of the Court of Chancery, when the Chancellor presides in the House of Lords at the hearing of appeals, or is required, in the exercise of his political functions, to attend at Cabinet Councils. This modification of the government measure is understood to have been suggested by a member of the Equity Bar of considerable experience, and it certainly avoids the practical difficulties that rendered the original scheme so manifestly objectionable.

Under the bill now submitted to parliament, the executive government is not deprived of the benefit of the Lord Chancellor's

advice and support in his political capacity as a member of the cabinet, and the individual holding that high office will continue, as heretofore, to preside in the House of Lords. It is only in the Court of Chancery that any change is contemplated, and there the Lord Chancellor will still preside, the constitution of the Court being unaltered, except by the addition of two auxiliary Equity Judges, who are to rank above the Vice-Chancellors. That the business of the Court of Chancery, in matters in which the Chancellor exercises primary jurisdiction, should be proceeded with in the absence of the head of the Court may be in some sense an evil, but it is assuredly an evil of no great magnitude, compared with that which arises from the suspension of the business of the Court during the necessary or inevitable absence of the Lord Chancellor; and the creation of a competent appellate tribunal in Equity, entitled to and possessing the confidence of the profession, affords the prospect of an improvement in the administration of justice in Chancery, long desired, and the value of which can hardly be overrated.

That portion of the original plan by which it was proposed to transfer the Ecclesiastical patronage of the Chancellor to the first minister of the crown, has been judiciously abandoned: the duties, responsibilities, and authority of the office, are in no respect to be diminished, but, by an inconsistency, for which it is difficult to find a satisfactory explanation, it is suggested that the salary attached to the office of Lord Chancellor should be reduced in the proportion of nearly 30 per cent., or from 14,000*l.* to 10,000*l.* per annum. The reason that has been—the only reason we believe that can be—given for diminishing the emoluments of the office is, that the appointment of two new judges will inevita-

bly increase the expenses of the judicial establishment, and that by taking 4,000*l.* from the salary of the Lord Chancellor, and 1,000*l.* from that of the Master of the Rolls, the sum to be provided from the public purse for the salaries of the new judges will be proportionably reduced. If this be the principle upon which the ministerial proposal to reduce the salary of the Chancellor proceeds, it is wholly unworthy of popular approval or parliamentary support. To discover its infirmity, it is only necessary to consider the application of the principle to some other branch of the public service. Suppose it to be deemed expedient, to increase the military force of the country by the addition of two regiments, what would be thought of the administrative and financial talents of the Secretary at War, who proposed to meet the expenses of the newly-raised regiments by deductions from the pay of the guards and artillery?

If two additional Equity Judges are necessary, surely the country can afford to pay for their services. It is not intended that under the arrangement now proposed, the individual holding the great seal shall devote one hour less than he has hitherto done to the public service. If partially relieved from the performance of one class of duties, more will be expected from him in reference to another class. "It is hoped," says Lord John Russell, "that the Lord Chancellor will be able to devote more time to the consideration of legal measures brought before parliament." A more profitable occupation of the time of one, uniting the knowledge and habits of a statesman with the acute and practised mind of a great lawyer, can hardly be conceived, but it affords no justification for diminishing the income the Chancellor now receives. The real question is, whether the salary of the Lord Chancellor exceeds what is necessary to maintain the state and dignity of the office? In deciding this question it must be remembered, that the chancellorship has seldom been entrusted to the possessor of a large hereditary fortune. The holder of the office has generally been the architect of his own fortune. The office is constantly referred to, as affording the best and most glorious illustration of the freedom of British institutions, under the influence of which, a man, without any distinction from birth, may attain to the highest position amongst the hereditary nobles of the land. To maintain so conspicuous a position with dignity, the Chancellor re-

quires not only transcendent talents, but the possession of an income in some respects proportioned to the fortunes of those by whom he is surrounded, and over whose deliberations he presides. It may be matter of indifference to Lord Frero, (whose disregard for money has been remarkable during the whole of his professional career,) whether the salary of the office he so worthily fills, continues at fourteen thousand or is reduced to ten thousand pounds. But, apart from the profession, the public are profoundly interested in upholding the independence and grandeur of the office of Lord Chancellor. It is one of the merits of the government measure, which has secured for it so large a share of professional approval, that it does not abridge the power or interfere with the functions of the individual to whom the custody of the great seal may be entrusted. There is good reason to hope that when the project comes to be better considered, Lord John Russell will find, as regards this, as well as other parts of his plan, that "second thoughts are best," and that it would be an unwise and injudicious application of the principle of economy to reduce the salaries of the Lord Chancellor and the Master of the Rolls, in the manner proposed.

The Bill after declaring that it is expedient to make further provision for the administration of justice in the High Court of Chancery and in the Judicial Committee of the Privy Council, proceeds to provide as follows:—

"1. It shall be lawful for her Majesty, from time to time, by letters patent under the Great Seal of the United Kingdom, to appoint two persons, being or having been respectively barristers-at-law of 15 years standing, to be and be styled Judges of the Court of Appeal in Chancery, and every judge so appointed shall hold his office during good behaviour; provided always, that it shall be lawful for her Majesty to remove any such judge from his office upon an address of both Houses of Parliament; and the Lord Chancellor, together with such two judges, for the time being appointed as aforesaid, shall form the Court of Appeal in Chancery.

"2. The said judges to have rank and precedence after the Lord Chief Baron.

"3. Oath of office to be administered by Master of the Rolls to said judges.

"4. That all the appellate and other jurisdiction of the High Court of Chancery in England which is now possessed and exercised by the Lord Chancellor alone as a judge in the said Court of Chancery, and all powers, authorities, and duties, as well ministerial as judicial, incident to such jurisdiction, now exercised and performed by the Lord Chancellor,

shall and may be had, exercised, and performed by the said Court of Appeal.

"5. Where under any act of parliament any jurisdiction is vested in the Lord Chancellor, or any power, authority, or duty is to be exercised or performed by the Lord Chancellor, and under the directions of any act or by the usage in this behalf such power, authority, or duty is or ought to be exercised or performed by the Lord Chancellor acting as a judge in the said Court of Chancery, all such jurisdiction, power, authority, and duty, and the ministerial powers and authorities incident thereto or consequent thereupon, which are now exercised and performed by the Lord Chancellor, shall (after the commencement of this act) be had, exercised, and performed by the said Court of Appeal.

"6. That all appeals which under the Bankrupt Law Consolidation Act, 1849, may now be made to one of the Vice-Chancellors sitting in bankruptcy, shall be made to the Court of Appeal in Chancery, in the manner and within the time directed by the said act in respect of appeals to the Vice-Chancellor, and all jurisdictions, powers, and authorities vested in such Vice-Chancellor, shall be had and exercised by the said Court of Appeal. Provided that there shall not be any appeal from the Court of Appeal to the Lord Chancellor, anything in the said act to the contrary notwithstanding.

"7. The decision of the majority of the judges of the Court of Appeal to be deemed the decision of the Court. If the judges be equally divided on any matter brought before them by way of appeal, the decree or order appealed from to be taken as affirmed, unless the Lord Chancellor directs the matter to be reheard before the full Court.

"8. All decrees, &c., of the Court of Appeal subject to appeal to the House of Lords, in the cases in which decrees of the Lord Chancellor would have been subject to appeal.

"9. One of the judges appointed under this act sitting with the Lord Chancellor, or both such judges sitting apart from him, to form the Court of Appeal. The Lord Chancellor sitting alone to have co-ordinate jurisdiction with the Court of Appeal.

"10.) The Lord Chancellor to regulate sittings and business of Courts of Appeal."

The following clause, saving the ministerial powers of the Lord Chancellor, would hardly be intelligible if abridged, and is therefore copied at length.

"11. Nothing herein contained shall affect any of the powers, duties, or authorities attached to the office of Lord Chancellor, or exercised by the Lord Chancellor as Keeper of the Great Seal, except the powers, authorities and duties which are exercised and performed by him acting as a judge in the said Court of Chancery, either by virtue of his ordinary jurisdiction or of any statute, and the ministerial powers, authorities, incident thereto respec-

tively, or affect the powers, authorities and duties of the Lord Chancellor as having the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, or in relation to letters patent, grants, or writings, passed or to be passed under the Great Seal of the United Kingdom, or the revocation of such letters patent, grants, or writings, or the powers and authorities of the Lord Chancellor in right or on behalf of her Majesty as visitor of any charity or other foundation, or the powers of the Lord Chancellor of appointment to or removal from or otherwise in relation to offices in the Court of Chancery, or other offices, save as herein specially provided, or the powers of the Lord Chancellor to direct and regulate the sittings and duties of the Vice-Chancellors, or any powers of the Lord Chancellor, (whether to be exercised by the Lord Chancellor alone, or with the concurrence or advice or consent of the Master of the Rolls, or of the Master of the Rolls and the Vice-Chancellors, or otherwise,) to make rules or orders for regulating the practice, proceedings, and business of the Court of Chancery, or the business or duties of any of the offices or officers of such Court.

"12. In case of the illness or temporary absence of the Master of the Rolls or any of the Vice-Chancellors, the Lord Chancellor by writing under his hand may authorise one of the judges of the Court of Appeal to sit in lieu of the Master of the Rolls or such Vice-Chancellor.

"13. Judges of Court of Appeal, if Privy Counsellors, to be members of the Judicial Committee of the Privy Council.

"14. So much of 3 & 4 Will. 4, c. 41, as provided that four members of Judicial Committee be present to form a quorum repealed. In future it shall be sufficient if three members be present.

"15. The Equity Judges to give their attendance in the House of Lords, in the same manner as the judges of the Courts of Law, and to be summoned in like manner to give their assistance, advice, or opinion upon matters proposed by such House for consideration.

"16. Reduction of the Lord Chancellor's salary to the net yearly sum of 10,000*l*.

"17. Reduction of salary of the Master of the Rolls to 6,000*l*.

"18. Salary of 6,000*l*. to be paid to each of the judges of the Court of Appeal out of the interest and dividends arising from the suitor's fund.

"19. Her Majesty empowered to grant an annuity to each of the judges appointed under this act, upon his resignation; but such grant not be valid unless the grantee has held judicial office for fifteen years or is affected with some permanent infirmity.

"20. Lord Chancellor, when mentioned in the act, to include Lord Keeper or Lords Commissioners of the Great Seal for the time being."

THE THREE COUNTY COURT EXTENSION BILLS.

It is important that our readers should keep in mind the several objects of the *three* bills now before parliament for extending the jurisdiction of the County Courts.

The first has passed the House of Lords and has been read a second time in the Commons. It enables the Judges of the Court of Chancery to direct accounts and inquiries to be made by the County Courts, giving them the same powers as Masters in Chancery. It also enables them to examine witnesses in Chancery suits in the presence of the parties (*if the judge think proper*).¹

The second bill restricts the jurisdiction of the Court of Bankruptcy in London, abolishes all the district or country Bankruptcy Courts, and gives their jurisdiction to the County Courts.

The third bill proposes to give an *unlimited equitable* jurisdiction to the County Courts on *claims* by creditors, pecuniary legatees, and residuary legatees;—to take accounts and administer the estates of intestates, testators, and partners,—the appointment of trustees, &c.²

Now, with all due submission to the advocates of the County Courts and the opponents of the Superior Courts, we think that the useful objects and original design of the County Courts will be destroyed, if these projects are successful. The Courts will no longer be, what the statute expressly intended, "*Small Debt Courts*," in which the humbler class of suitors might enforce their demands expeditiously at small expense; but the judges will be chiefly occupied in the important business of Masters in Chancery and Commissioners in Bankruptcy. Seeing how dissatisfied they now are with the duties delegated to them by the Small Debts Act,—how ambitious they are to occupy higher judicial positions,—it is manifest that, when the coveted jurisdiction shall be obtained, their minds will be devoted to the exercise of their more elevated powers, and we say again the business of the poorer class of suitors will be comparatively neglected.

We admit, however, that the bill which

has passed the Lords, and is now before the House of Commons, contains several useful provisions;—that, where the parties and witnesses reside in the same town or city, the examination of witnesses *viâ voce* on the spot will be beneficial; and these inquiries may be usefully conducted and the result reported to the Superior Court. But to confer on the County Courts an original jurisdiction equal to that of the Masters in Chancery—nay of the Court of Chancery itself—and of the Commissioners in Bankruptcy, will destroy their practical utility in the cases for which they were peculiarly appointed. It is true that the expense and delay of proceedings both in Law and Equity in the Superior Courts require reduction, and for effecting these purposes two Commissions are now sitting. Surely it would be reasonable to suspend further legislation until the Commissioners have made their report. There is no reason to doubt that they will propose an ample measure of reform both in Law and Equity.

The old and often refuted complaint has been revived, that the solicitors in London oppose the extension of the County Courts because they may interfere with London agency business. Now the agents constitute but a comparatively small number of the practitioners in London, and their interests are inseparable from those of their clients, the country solicitors. We do not believe that the respectable men in the country join in imputing to their brethren in town the selfish motives which are elsewhere supposed to govern them. We believe, indeed, that it would be greatly to the interest of the London houses if the delay and expense of proceedings in Chancery could be largely diminished. Their business would be increased, and they would be earlier repaid their large outlay and remunerated for their services. It is not the interest of any branch of the profession to countenance delay; and we believe, indeed, that it is *delay*, more than expense, that is the chief cause of the public outcry against the Court of Chancery.³

¹ The parties should have the *right* to attend and conduct the examination by their counsel or solicitors.

² In the Masters' Jurisdiction in Equity Bill, it is also proposed, that the County Court Judges shall be authorized to examine witnesses. In fact, the County Courts seem to form the great topic of modern legislation.

³ We deem it proper again to say, that though we have peculiar means of information regarding the opinions and views of the solicitors, and endeavour to make a discreet use of that advantage, it must not be inferred that they are in any degree responsible for the statements or remarks which appear in this journal, except so far as we are enabled to set forth the reports and papers of the several Law Societies.

REGISTRATION OF ASSURANCES.

COMPARATIVE ADVANTAGES OF A LOCAL AND METROPOLITAN REGISTRY.

We have laid before our readers the views of the solicitors in various parts of the country on the Bill for establishing a General Register of Deeds, and now add the substance of a petition from the attorneys and solicitors of *Worcester*, which was presented by the Lord Chancellor. Several of the objections urged in this petition, are of the same kind as those stated in other petitions or resolutions, but they are somewhat varied in the mode of putting them, and there are additions which are well entitled to consideration.

In the petitions from the country, a *Local Registry* is comparatively but little opposed, but it should be recollected that the strongest objections to a General Registration of all Deeds and Instruments, apply equally to a *Local* as to a *Metropolitan Registry*. There will be the same expense of registration, the same exposure of commercial and family affairs, and the same difficulty in obtaining loans on equitable deposits. It may be that the registry will be more easily searched in many instances, but it is doubtful whether this will be so in the majority of cases. In large towns it may be advantageous, but where a considerable distance has to be travelled by cross roads, the search in London would often be preferable. The official search would be equally expensive, because, according to the metropolitan plan, separate registers would be kept for each district. Then the exposure in the neighbourhood of the property would be greater. The inquisitive or the hostile would have an easier task on the spot than if they had to come to London, and it is precisely amongst his neighbours that the borrower would wish to avoid the discussion of his private affairs.

Other important objections also apply equally to town and country registration, and we would suggest to the country solicitors the propriety of not yielding the question of local registration, for we believe we speak the general, if not the unanimous opinion of the London profession, that the *Middlesex* registry brings upon them additional responsibility and much inconvenience, and is productive only of useless expense to their clients.

PETITION FROM WORCESTER.

The following extracts are from the petition of the solicitors of *Worcester* :—

That the petitioners, in the exercise of their profession, are well acquainted with the subject matters to which the bill relates; and in their opinion, the measures proposed by the bill will not in any degree lessen the expenses attendant either upon the investigation of the title or upon the transfer of real property, as an abstract of the title must be prepared as at present, and the necessary charges attendant upon the carrying the provisions of this bill into effect will be in addition to the present expense; and as such charges will be incurred by the employment of an agent and in official fees, the interests of the petitioners and their clients in this respect are identical.

That the establishment of one office in London for registration by deposit therein of the originals of all future deeds affecting real property throughout England and Wales, will cause great inconvenience, risk, delay, and additional expense.

That it is found in practice frequently requisite to refer to original documents of title, but as the proposed act requires all such original documents to be deposited in London, any reference to them, as well as their production for any purposes, must be attended with great additional expense.

That the original title deeds are frequently required to be produced, not only on trials *at nisi prius*, but upon commissions, arbitrations, matters of reference, enquiries as to boundaries, rights of windows, roads, or other easements, and on many other occasions; and the petitioners, from their experience of the great expense of obtaining the production of original wills in like cases, are enabled to state that the expenses attending such productions of title deeds (and which will necessarily be of frequent occurrence) will be a most grievous burden upon the owners of property.

That the proposed system of registration will entail upon purchasers not only the additional expense of the several searches required by the act to be made for their protection, but that in order to enable them at a future time to deal with their own property, it will be requisite that a purchaser should either take his conveyance in duplicate or obtain an office copy thereof, otherwise he would be without any documentary evidence of title in his possession; and in order to verify an abstract of title delivered to a subsequent purchaser, the abstract must be compared with the original title deeds deposited at the Registry Office in London, which could only be done in most cases at considerable delay and expense, and through the medium of a London agent.

That the House cannot be aware of the large number of transfers of small properties which take place throughout the kingdom, at present at a small cost, but in respect of which the charges attending a compliance with the provisions of the act, will, independently of all objections thereto, operate as an increase of the average cost to double the present amount.

That to small purchasers especially, the system of registration will be a great tax, as how-

ever small the amount of the purchase money, an agent in London must necessarily be instructed to cause the general register to be searched in its various departments, to enter a caveat, and afterwards register the deed of conveyance and take an office copy, unless the purchaser incurs the additional expense of having the original in duplicate.

That under the existing law, any party who is suddenly pressed for money can, and frequently does, deposit his title deeds with his banker, or other person, for a temporary loan, without the aid of intervention of a solicitor; and the great convenience of this mode of meeting a sudden emergency is well known in the mercantile world; but should the proposed bill pass into a law, its effects would be to render it unsafe for any person to advance money upon a deposit of deeds or equitable mortgage, without first taking such precautions and making such inquiries and researches under the act as would cause considerable delay, and thereby in many cases deprive the owners of property of the advantages they now derive from the system of equitable deposit of title deeds; and independent of the above, the publicity that would necessarily be given by registering the transaction might in many instances seriously and prejudicially affect the credit of the party so depositing his deeds.

That the clause giving priority in all cases to a subsequent registered assurance, although the party claiming under the same had previous notice of a prior assurance, is unjust, and will in all probability lead to great fraud upon and damage to *bond fide* purchasers, who may in certain cases be deprived of their property by the neglect, omission, mistake, or delay of parties who are necessarily employed to carry the provisions of the act into effect, and over whom they have no direct control.

That by the proposed bill the pecuniary affairs of all persons possessing real property will to a considerable extent be exposed to the scrutiny and inspection of parties having no interest therein, and family arrangements of a private nature will become known by the means of access given to all persons to search the registry.

That it will be very objectionable to all classes of her majesty's subjects to be compelled to send to be deposited in a registration office in London all future title deeds relating to their property, unless they incur an extra expense in taking duplicates; and the petitioners can discern no valid and just reasons for depriving the owners of property of the right of retaining and keeping their title deeds and muniments of title in their own possession.

That the machinery of the bill is so complicated that instead of rendering the investigation of titles and the transfer of property more simple and efficient, that it will tend to great confusion, and make both the investigation of the title and the transfer of the property more difficult and expensive.

That if the House shall be of opinion that a

general registration of deeds will be of benefit to the public, the petitioners submit for their Lordships' consideration whether a local or county registration of deeds will not be less expensive and more beneficial than a metropolitan; first, because the party interested could himself search the register, and in case a question arose on the identity of the property, (which will most probably be of frequent occurrence,) a personal inspection of the deed and plan by the party knowing the property would be more satisfactory than by a stranger; second, because the purchaser would in all cases be more securely protected by his solicitor himself searching the register than by his solicitor's agent; third, because a local register would be of more easy access to those interested therein than a metropolitan; fourth, that it is against true policy to centralize all the documents of the kingdom in its capital, thereby making, as in France, the whole provinces dependent upon and governed by the capital.

MASTERS' JURISDICTION IN EQUITY BILL.

THIS Bill, which was introduced by Lord Brougham on the 5th instant, is the same as that of last Session, except the second section, which is new. Its scope may be thus stated:—

In any case in which a suit might be instituted in the Court of Chancery for administration or account, and in such other cases as the Court shall direct, the matter may be carried primarily before the Master in Ordinary in rotation; Sect. 1.

The application to the Master to be in writing, and signed by the party making the same; alphabetical indexes to be made; 2.

Service of notice, &c. as to such matter, to be made as the Master shall direct; 3.

The Master to have power to entertain or dismiss the application, wholly or in part; 4.

If the Master entertain application, he is to have the same jurisdiction as would have been had by the Court; 5.

The Master may appoint guardians to infants; 6.

After the Master has made an order entertaining the application, or after reference to him, no creditor is to sue without leave of the Master; 7.

Proof of debts by executor, &c.; 8.

Books of account may be adopted, and the Master may employ an accountant; 9.

The Master's Orders to have the same effect as Orders of Court; 10.

Appeal from the Master's Orders, rehearing, &c., within a limited time; 11.

The Court may direct a suit to be instituted, or any party interested may institute a suit, but upon *peril of costs*; 12.

The Master may direct a suit to be instituted,

or may make a special report concerning the same; 13.

Where a suit is instituted, proceedings before the Master to be valid; 14.

Payment, taxation, and recovery of costs of proceedings under this act; 15.

Within six months from its passing the Masters in Ordinary to make rules and orders for procedure under this act; 16.

The Lord Chancellor to make rules and orders for extending the scope of the act; 17.

Until such rules, &c. be made, proceedings to be carried on as the Master shall direct; 18.

Application to the Master to constitute a *lis pendens*; 19.

Application may be made to the Master for partial relief, &c.; 20.

The Master may make order for consolidation of two or more proceedings; 21.

As to transmission of interest by death, marriage, &c. of party to proceeding under this act; 22.

Parties may be classified, and representatives of class appointed; 23.

District Commissioners in Bankruptcy and Judge of the County Courts, &c. appointed Commissioners for taking evidence under this act; 24.

Courts, judges, &c. to take judicial notice of signature of Master or Registrar, and of office seals of Court of Chancery, subscribed to orders, reports, &c. made or signed under this act; 25.

In case of illness or absence of the Master any Master may act; 26.

Construction of act; 27.

Act not to apply to Ireland; 28.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

SALE OF ARSENIC REGULATION.

14 VICT. C. 13.

THE preamble of this act recites that the unrestricted sale of arsenic facilitates the commission of crime. It is therefore enacted that on every sale of Arsenic, particulars of sale be entered in a book by the seller in form set forth in the schedule to this act; s. 1.

Restrictions as to sale of arsenic; s. 2.

Provision for colouring arsenic; s. 3.

Penalty for offending against this act; s. 4.

Act not to prevent sale of arsenic in medicine under a medical prescription; s. 5.

"Arsenic" to include arsenious compounds; s. 6.

The clauses of the act are as follow:—

An Act to regulate the Sale of Arsenic.

[5th June, 1851.]

1. Every person who shall sell any arsenic

shall forthwith, and before the delivery of such arsenic to the purchaser, enter or cause to be entered in a fair and regular manner, in a book or books to be kept by such person for that purpose, in the form set forth in the schedule to this act, or to the like effect, a statement of such sale, with the quantity of arsenic so sold, and the purpose for which such arsenic is required or stated to be required, and the day of the month and year of the sale, and the name, place of abode, and condition or occupation of the purchaser, into all which circumstances the person selling such arsenic is hereby required and authorized to inquire of the purchaser before the delivery to such purchaser of the arsenic sold, and such entries shall in every case be signed by the person making the same, and shall also be signed by the purchaser, unless such purchaser profess to be unable to write, (in which case the person making the entries hereby required shall add to the particulars to be entered in relation to such sale the words "cannot write,") and, where a witness is hereby required to the sale, shall also be signed by such witness, together with his place of abode.

II. No person shall sell arsenic to any person who is unknown to the person selling such arsenic, unless the sale be made in the presence of a witness who is known to the person selling the arsenic, and to whom the purchaser is known, and who signe his name, together with his place of abode, to such entries, before the delivery of the arsenic to the purchaser, and no person shall sell arsenic to any person other than a person of full age.

III. No person shall sell any arsenic unless the same be before the sale thereof mixed with soot or indigo in the proportion of one ounce of soot or half an ounce of indigo at the least to one pound of the arsenic, and so in proportion for any greater or less quantity: Provided always, that where such arsenic is stated by the purchaser to be required, not for use in agriculture, but for some other purpose for which such admixture would, according to the representation of the purchaser, render it unfit, such arsenic may be sold without such admixture in a quantity of not less than ten pounds at any one time.

IV. If any person shall sell any arsenic, save as authorized by this act, or on any sale of arsenic shall deliver the same without having made and signed the entries hereby required on such sale, or without having obtained such signature or signatures to such entries as required by this act, or if any person purchasing any arsenic shall give false information to the person selling the same in relation to the particulars which such last-mentioned person is hereby authorized to inquire into of such purchaser, or if any person shall sign his name as aforesaid as a witness to a sale of arsenic to a person unknown to the person so signing as witness, every person so offending shall for every such offence, upon a summary conviction for the same before two

justices of the peace in *England or Ireland*, or before two justices of the peace or the sheriff in *Scotland*, be liable to a penalty not exceeding twenty pounds.

V. Provided, That this act shall not extend to the sale of arsenic when the same forms part of the ingredients of any medicine required to be made up or compounded according to the prescription of a legally qualified me-

dical practitioner, or a member of the medical profession, or to the sale of arsenic by wholesale to retail dealers, upon orders in writing in the ordinary course of wholesale dealing.

VI. In the construction of this act the word "arsenic" shall include arsenious acid and the arsenites, arsenic acid and the arseniates, and all other colourless poisonous preparations of arsenic.

THE SCHEDULE.

Day of Sale.	Name and Surname of Purchaser	Purchaser's Place of Abode.		Condition or Occupation.	Quantity of Arsenic sold.	Purpose for which required.
1 September, 1851.	John Thomas.	Hendon.	Elm Farm	Farm Labourer.	5 lbs.	To Steep Wheat.

(Purchaser's Signature.)
JOHN THOMAS.

Witness.
JAMES STONE,
Grove Farm, Hendon.

(Seller's Signature.)
GEORGE WOOD.

Or, if Purchaser cannot write, Seller to put here the Words "cannot write."

PAROCHIAL RATING OF RAILWAYS.

THE difficulty of applying the ordinary principle of parochial assessment to the rating of railways for the relief of the poor, has long been felt to be of such a nature as to call imperatively for legislative interference. The Act "to regulate Parochial Assessments," (6 & 7 Will. 4, c. 96,) establishes one unvarying and inflexible rule, by enacting that no rate for the relief of the poor shall be valid, unless made upon an estimate of the rent at which the property rated might reasonably be expected to let from year to year. As soon as it was determined that the land occupied in a parish by a railway company, was properly rateable to the relief of the poor in that parish, the difficulty of giving effect to the rule laid down in the Parochial Assessment Act became manifest. How was it possible, with any approach to accuracy, to estimate what a tenant might reasonably be expected to give by way of rent, from year to year, for a small portion of a long line of railway running through a particular parish. Since the year 1842, when *The Queen v. The London and South Western Railway Company*,¹ was decided, the Court of Queen's Bench has been vainly and unsuccessfully struggling against this difficulty. In that case, the first of a series in respect to the principle

of railway rating, the Court determined, "that the land must be rated in any particular parish, according to its actual value there, although such value was owing in a great measure to stations, houses, and works not within the parish, and that the rate in any particular parish was to be estimated by the amount of profit actually earned in that parish, and not by the proportion which the length of railway in the parish bore to its entire length." The parochial authorities, before making a rate, were therefore bound to ascertain what was the profit actually earned in respect of a portion of a line of railway running through a parish in which there might be no station, and no actual receipt of money. The profit, or loss as it may be, of the whole line of railway could perhaps be deduced from a careful examination of the company's books, but the profit or loss of a particular parish was not correctly estimable. The Court, however, felt itself constrained to apply to every case brought before it the parochial, in preference to what is called the mileage principle, and to begin by assuming the practical impossibility that a sane person could be found to rent a piece of railway running through a particular parish irrespective of its connexion with other portions of the line. As the number of cases calling for the opinion of the Court multiplied, the inapplicability of the rule suggested by the act of parliament became more manifest, and the Court

¹ Reported 1 Queen's Bench R. p. 558.

seems at length to have come to the conclusion, that the legislature must be applied to, and that if bound to apply the principle heretofore adopted in the various cases which must arise, the Court will of necessity be called upon to exercise the functions of legislators rather than of judges, making rather than expounding the law.

In a case of the *Queen v the Great Western Railway*, recently argued, the Lord Chief Justice of the Court of Queen's Bench (on Saturday, the 7th instant) formally announced, that the Court postponed its judgment, hoping the legislature would interfere to relieve them from the difficulty in which they were placed in respect of the application of the established principles of rating to the novel and peculiar description of property belonging to railways. His Lordship added, that there would be no difficulty found in laying down a simple and equitable rule applicable to that description of property, but that it was for the legislature and not the judges to suggest that rule.

The resolution the Court of Queen's Bench came to, in this instance, appears to have met with general approval. The only doubt seems to be whether it should not have been come to, and acted upon, at an earlier period.

up an expected deficiency in the Shop Tax. That such Shop Tax, and the Warrant Stamp, and all other stamps on law proceedings, have been abolished. That the Certificate Duty has been continued and largely increased.

That the taxes to which your petitioners are subjected are,—1st, a Stamp of 120*l.* upon the Articles of Clerkship; 2nd, a Tax of 25*l.* upon admission; and 3rd, the Tax from which your petitioners seek to be relieved, namely, 12*l.* for a Certificate if practising in London, Edinburgh, or Dublin, and 8*l.* if practising in any other part of the United Kingdom.

That no other profession or trade is burdened with a treble tax for the privilege of exercising their calling, whether levied by means of a stamp or licence, and your petitioners submit that they ought to be relieved from the *third* of the three personal Taxes,—the more especially as the other two Taxes produce annually upwards of 84,000. That the exclusive right to practise is held equally by the other branch of the legal profession, and by the practitioners in physic, and yet they are not taxed so highly on entering the profession, nor are they taxed at all for carrying it on.

Your Petitioners therefore humbly pray that your Honourable House will be pleased to relieve them and the rest of the Attorneys, Solicitors, Proctors, and Notaries, from the payment of the Annual Duty on Certificates.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ANNUAL REPORT.

In proceeding to make some further extracts from the Report of the Committee of Management, we select the statement of their exertions in regard to various Bills in Parliament:—

"In their last Report the Committee mentioned the injurious imputation that had been cast upon the profession, by a clause in the Government Bill to provide for the Audit of Railway Accounts. Two years ago, government proposed to prohibit all directors from advancing to their solicitors more than one-half of the amount of any bill of costs, during the progress of the business, and also to make it incumbent on railway auditors to report specially, amongst other things which were deemed irregular, every instance in which any costs had been paid without previous taxation. No bill then passed upon the subject, and last year it was not attempted to introduce the former provision: two bills were introduced, one by government, containing the remaining objectionable clause, and one by Lord Stanley, on behalf of the London and North Western Company, which was free from it. The bills were referred to a Select Committee; and the Committee of this Association protested against the obnoxious provision in a petition which was

REPEAL OF CERTIFICATE DUTY.

It has been deemed expedient by Lord R. Grosvenor to defer his motion till *Tuesday, the 8th July*, in order to secure the first place at the evening sitting. There was a preceding motion on the list for the 1st July, which might have occupied the House till a late hour, or possibly the whole evening, and then it would have been impracticable to bring on the motion usefully this session.

The following is suggested as a form of Petition to be used by the attorneys and solicitors in the country who have not already petitioned. It should be sent in good time for the Motion on the 8th July, and the members, urged to attend the debate.

To the Honourable the Commons of Great Britain and Ireland, in Parliament assembled.

The Humble Petition of the undersigned Attorneys, Solicitors, and Proctors, practising at

Sheweth,

That the Certificate Duty on Attorneys, Solicitors, and Proctors, and a Tax on Warrants to prosecute, were imposed in 1785, to make

presented by Lord Stanley. The Select Committee, however, reported in favour of a bill which contained the clause, and which was passed and sent to the Commons. There the Committee again petitioned against the clause, and the bill was ultimately abandoned. This Session, a bill has been introduced into the Commons by Mr. Locke and Mr. Ewart, which the Committee are glad to see is entirely free from this unjust and illiberal provision.

"Another bill, which was introduced last Session, in a shape that was injurious to the profession, was that 'to prevent the holding vestry and other meetings in Churches, and for regulating the appointment of Vestry Clerks.' By one provision of the bill, which is by no means indicated in its title, it was proposed to empower any vestry clerk, although not an attorney or solicitor, if authorized by the overseers or churchwardens, to make or resist any application, or to take and conduct any proceedings before any justices at Petty or Special Sessions, or out of Sessions, and, so far, to repeal the 6 & 7 Vict. c. 73. The Committee, in opposition to this proposal, represented to the House in a petition, which was presented and supported by Mr. Mullings, that such a clause would be both unjust to the profession, and, as all such injustice must ultimately prove, detrimental to the public welfare.

"That attorneys and solicitors, in order to qualify themselves for the practice of their profession, are necessarily subjected to an expensive course of legal training.

"That, in order, amongst other reasons, to provide an efficient supervision over them as a body, they are further subjected to very heavy and peculiar taxes.

"That they are also bound by a peculiarly stringent system of rules, regulating both their professional practice and their professional charges.

"That this whole system, in order to act justly, must be carried out uniformly and consistently, and that those who are subjected to peculiar burdens and restrictions have a right to expect due and corresponding protection.

"That the conduct of proceedings before justices of the peace at Petty or Special Sessions is strictly professional business, which requires, for its efficient discharge, a professional education.

"That it ought, therefore, both on the grounds of justice to the profession, and of expediency for the public, to be confined to members of the profession.

"At the suggestion of the Committee, some of the Provincial Law Societies also petitioned against the clause, and the effect of the opposition thus raised was, that the clause was withdrawn.

"The bill, however, was not entirely objectionable in the shape in which it was sent to the House of Lords, inasmuch as, under the head of Duties of Vestry Clerks, the following were enumerated:—

"To prepare and issue the necessary process for recovering arrears of rates before the

justices, and to procure the summons to be served, and to attend the justices thereon, and advise the churchwardens and overseers as to the recovery of such arrears.

"To advise the churchwardens and overseers in all the duties of their office, and also to perform such other duties and services, of a like nature, as the Poor Law Commissioners, from time to time, at the request of the churchwardens and overseers, shall prescribe and direct."

"Under this section, the vestry clerk is to perform certain duties which, undoubtedly, ought to be confined to the duly qualified attorney, and the bill, therefore, ought to have contained a clause making attorneys only eligible for the appointment. The Committee, therefore, presented a petition to the Lords to insert such a clause, but their prayer was not complied with, and the bill became an act without it.

"It may be worth while to remark, that the clause which the Committee succeeded in getting expunged was copied from the 7 & 8 Vict. c. 101, 'For the further Amendment of the Laws relating to the Poor in England,' under which any clerk or other officer to any board of guardians, although not an attorney, has precisely the powers which were sought last Session to be extended to vestry clerks."

The Committee then proceed to notice the principal alterations, or proposed alterations, in the law, which have occupied their attention since the date of their last report.

"The act by which the jurisdiction of these Courts was extended to 50*l.*, as it was passed by the Commons, would have deprived the Superior Courts of their jurisdiction between 20*l.* and 50*l.*, and allowed of no appeal, even on questions of law.

"The Committee believed that the extension itself was a misfortune, both to the profession and to the public, and that the proper remedy for the undoubted evils affecting the administration of justice in the Superior Courts, would have been an efficient reform of those Courts themselves, in such a way as to render their course of procedure less expensive, and more speedy.

"They were of opinion that the course actually taken was open to many objections. It threw upon the country the expense of maintaining, at the same time, two entire systems of judicature for the determination of, for the most part, the same class of cases. It deprived the suitors of the immense convenience, which the progress of civilization had secured to them, of being able to trade in all parts of the country, and yet of obtaining the protection of the law in case of dispute, with very rare exceptions, not above four per cent., not only without leaving their own business, but without even compelling their debtors to do so, except for the purpose of instructing their attorney. In the place of this, it compelled plaintiffs to follow their debtors into their

spective localities all over the country, taking about with them their witnesses and their books of trade, at an amount of expense and inconvenience which would have proved, for all small amounts, an absolute prohibition of recovery. It gave debtors, in all cases, a motive to attempt to extort unfair concessions from their creditors; for it would frequently be a positive gain to submit to sacrifice a portion of a just claim, rather than incur the loss of time and risk of enforcing it in the County Court in person, or of entrusting it to an attorney, who, even if successful, would be compelled to charge his costs against his own client. Altogether it appeared an attempt to deprive suitors of those results of modern civilization and of our complicated social and commercial relations, responsible judges and professional assistance, in order to return back to the rude and simple state in which every man has to perform every portion of his own business himself, and so-called justice is dispensed according to the common-sense of a number of isolated judges, whose decisions are without appeal, and who, even if their decisions were uniformly correct, could not, in the present state of society, be so satisfactory to the nation, as judges surrounded by the guarantees afforded by the systems adopted in the Superior Courts.

"The Committee, accordingly, embodied their views in a petition against the bill, which they presented to the House of Commons at an early stage, but after the government had adopted it, of course, all hope of a successful opposition was at an end, and the Committee thenceforth confined their endeavours to procuring a modification of some of the most objectionable provisions. An attempt was made by Mr. Piggott to introduce a clause securing to barristers the same exclusive audience in the County Courts which they possess in the Superior Courts. In opposition to this the Committee represented that the principle upon which the Courts are established is to discourage all professional advocacy, except in cases in which the judge may deem such advocacy necessary, and then to reduce, as much as possible, its expense; whereas such an exclusive right would throw upon the suitors in all such cases, the necessity of employing the most expensive advocate, in addition to the cost of instructing him through an attorney, which expense, even if he is successful in his cause, he cannot recover from his opponent.

"It would be manifestly unjust, as well as subversive of the judicial policy always hitherto acted on, to allow barristers to appear, unless instructed through an attorney, as, from the nature of the business, they could not obtain adequate instructions without trenching upon the functions (such especially as drawing the case and examining witnesses,) for the exclusive permission to perform which attorneys are heavily taxed, and subjected to peculiarly stringent restrictions.

"Such an exclusive audience would be opposed to the objects of the County Courts, and

to their constitution as by law established, as well as to the uniform practice of all the old County Courts and Sheriffs' Courts, of which the new County Courts are simply an extension.

"The practice of permitting attorneys to appear as advocates in the Old County and Sheriffs' Courts, in the New County Courts, and in the Bankruptcy and Insolvency Jurisdictions, which have been exercised by the Bankruptcy Courts, both Metropolitan and Provincial, has been proved by experience, and beyond all question, to be calculated to further the ends of justice, by rendering its administration less expensive, without impairing its efficiency.

"The law, as it stands at present, leaves it open to the attorney to instruct a barrister in all cases when his client desires it, or the nature of the case renders it proper for him to take that step, the adoption of which is, in point of fact, always to his immediate pecuniary interest.

"A statement of these views was submitted to a considerable number of influential members of parliament; and they seem to have prevailed, for the clause was withdrawn.

"As soon as the bill appeared in the Lords, the Committee put themselves into communication with Lord Brougham; and having ascertained that he was prepared to advocate the permission of an appeal upon points of law, and that the Superior Courts should have concurrent jurisdiction above 20*l.*, they prepared, at the suggestion of his lordship, and placed in his hands, clauses to effect those objects, together with a statement of reasons in their favour; and although the exact clauses were not ultimately adopted by the House, yet their effect was provided for.

"The Committee hope that the detail into which they have entered upon this subject may not be considered by their members either useless or uninteresting, because they consider that this is an important portion of a great struggle, further instances of which will appear in subsequent portions of this report, which has been going on for some years, and which appears likely to continue—a struggle which was one of the principal motives that led to the formation of the association, and which remains one of the principal grounds which render its continued support and increased power, and consequent activity, a matter of real importance to the profession—a struggle in which, on the one hand, attempts are being continually made, and hitherto with a too uniform success, to deprive attorneys and solicitors of their eligibility to any appointments of honour and emolument, all of which appear to be doomed to pass into the hands of gentlemen possessing that high-sounding, but in reality utterly meaningless, distinction of being "Barristers of seven years' standing;" while, on the other hand, the attorneys are, every Session, being deprived of fresh portions of the ordinary functions of their profession, the exclusive permission to perform which forms

the sole cause for keeping them, as a profession, subject to peculiar taxes and restrictions, although, in fact, these functions are being transferred, and not very gradually, to the general public, as in the case of accountants and debt collectors; to the clerks of public officers, as those of overseers, churchwardens,

and poor law guardians; or to public officers of Courts of Justice, as the clerks and bailiffs of the New County Courts; who have succeeded in getting the monopoly of a large portion of the attorneys' business secured to them by law, and paid for in the shape of Court fees."

CANDIDATES WHO PASSED THE EXAMINATION.

Trinity Term, 1851.

Names of Candidates.

Adams, Edward
Apps, Thomas Robert
Ashwell, John, jun.,
Bannister, Edward
Bassett, Joseph
Batman, Henry Wealey
Benson, James
Berners, Charles
Bower, Arthur Perry
Brett, John
Bristow, George Ledgard
Brittlebank, George Goodwin
Brown, George Fowler
Brunskill, James
Burne, Richard Higgins
Bush, James Day
Calcott, Frederick Mowbray Berkeley
Carver, William Henry
Champ, Augustus Bertram

Chapman, Charles
Christopher, Danby Stevens
Cole, John Bassett
Cooper, John
Cooper, Richard Kelsall
Cridland, Joseph John
Cross, Edwin
Dodsworth, Charles
Downey, Marcus
Elliott, Henry Charles
Fisher, Edward
Fogg, William
Forster, Thomas
Gill, Jeremiah
Greenbank, Richard Hewatson
Hall, Stephen John
Holden, Lawrence

Hutchins, Frederick Leigh
Jay, George, jun.
Jennings, Henry Napleton
Jennins, Henry
Jones, Evan Miller
Jones, Henry
Kirk, John, jun.
Lawrence, Julius
Lightfoot, Frederick James
Matthews, Thomas
Mawe, Frederic Eustace
Mellersh, Robert Edmund
Mitscife, John Bellamy
Morris, Francis Burdett
Norris, Charles Musgrave
Peacock, Christopher Gilbert
Pearson, Ellis
Pearson, Matthew Tom
Peterson, Thomas Pexton
Pinniger, Henry William
Prentis, Henry
Freston, William Richard

To whom Articled, Assigned, &c.

William Samuel Adams
Thomas Poole; Alfred Frederick Chamberlayne.
John Bowley; William Ford
Charles George Bannister
Henry Frederic Lucas; Henry Falkner
Robert Henry Andersen
William Palmer
William Harrison Brown; Henry Brown
Thos. Holme Bower
Wm. Watson Oldershaw; Wm. Stoughton Vardy
Alfred Lester
John Brittlebank
Henry Minion Hawksworth; Wm. Eaton Mousley
Edward Wilson Scott; Charles Holme Bower
Potts and Brown
Edwyn Dowding
Charles Berkeley
John Eaden, jun.
George Badham; William Houghton; Geo. Barnes Canning
William Chapman
John Danby Christopher
John Nicholas Bennett
Anthony Adey
Charles Cooper
Stafford Moore Cooper
Joseph Addison M'Leod
Thomas Hair; William Boycot, jun.
Thomas Ferrand Dearden; John Molesworth
William Andrews; Charles Hastings Collette
Godfrey Tallents
John Hurley
Thomas Houghton Hodgson
William Wills
William Strickland Cookson
William Burchell
John Herdman Sherson; Henry Parkinson Sharp; re-assigned to John Herdman Sherson
William Thomas Longbourns
George Jay, sen.
Thomas Francis Jennings; Rd. Francis Jennings
Robert Barr
John Greene
Henry Simmons Coke
Thomas Greene
Peter Tait Harbin
Robert Henry Sawyer
John Sangster
Thomas Jones Mawe
Thomas Mellersh
Barry Parr Sqaunce; Thomas Tilson
Charles Condell
Abraham Horsfall
Richard Carline
Justly Pearson
Thos. Turner Pearson; Geo. Pearson Nicholson
Richard Brickdale Ward; Daniel Gould
Henry Pinniger
William Henry Johnson
William Taylor Prichard; Walter Searby Long

Bees, John Charles	John Rees
Renner, Charles	George Smith Ransom
Roach, George Charles	Henry Simmons Coke
Sanders, Benjamin Hadley	Minshall and Vernon; Edward Davey Johnson
Smith, Thomas Henry	William Warren Hastings; William Best
Smith, William	John Browne Smith; Edward Prior
Thomas, Cadogan Morgan	Alexander Cuthbertson; John Henry Rowland
Tucker, Walter James	Charles Benjamin Tucker
Walker, Thomas, jun.	Charles Walker
Watson, John, jun.	John Wadsworth; John Stuart
White, George	Thomas Nettleton; James Pratt
Williamson, Robert Reddall	William Forster Batt
Willison, John Cochet	Charles Carter, jun.
Worman, John Cadel	George Henry Ellis

NOTES OF THE WEEK.

NEW MEMBERS OF PARLIAMENT.

Sir Archibald Islay Campbell, Baronet, for Argyleshire, in the room of Duncan McNeill,

Esq., who has accepted the office of one of the Judges of the Supreme Court of Scotland.

James Johnstone, Esq., for Clackmannan and Kinross, in the room of Major-General Sir William Morison deceased.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Hardy v. Dartnell. May 27, 28, 29, 30. June 4, 1851.

INJUNCTION. — PARTNERSHIP ASSETS. — COMMISSION TO EXAMINE WITNESSES IN IRELAND.

On appeal from the late V. C. Wigram, an order for an injunction to restrain the defendant, T., the surviving partner of the firm of T. and H., solicitors of London, from receiving the partnership assets and appointing a receiver, and also to restrain the defendant D., who had been appointed trustee for winding up the affairs, from further interference therein, which had been obtained by the plaintiff, H.'s brother, a barrister of Dublin, who claimed to be a creditor under a memorandum signed by H. on behalf of the firm, but repudiated by T. as being without his knowledge or consent—was dissolved, and the amount of the partnership assets which had been paid into Court paid over to T., for the benefit of the partnership creditors.

An order for the examination of witnesses in Ireland was also discharged on appeal, which was obtained on June 20, 1849, the bill having been filed in March, 1847.

THIS was an appeal from two orders of the late Vice-Chancellor Wigram, dated 3rd May, 1847, and 20th June, 1849, by the first of which the defendant Dartnell, who had been appointed trustee for winding up the affairs of the late firm of Tristram and Hardy, solicitors of London, was restrained from further interference therein, and restraining Mr. Tristram, the surviving partner from receiving the partnership assets, and appointing a receiver; and by the latter a commission to examine witnesses in Ireland had been granted, (reported 18 Law Journ., N. S., Chanc. 467). It appeared that the defendant

Tristram had taken into partnership in 1826, Mr. Sebastian Tristram Hardy, the brother of the plaintiff, which partnership was dissolved in Dec. 1843, and that the plaintiff, James Josiah Hardy, then a barrister at Dublin, was in the habit of sending business required to be transacted in London to the firm, and that the accounts of these transactions remained unsettled at the death of S. T. Hardy, in Jan., 1847, and soon afterwards the plaintiff claimed to be a creditor to the amount of nearly 5,000*l.*, under a memorandum dated October, 1842, signed by S. T. Hardy on behalf of the firm, but which was repudiated by Tristram as having been signed without his knowledge. The bill was filed in March, 1847, and claimed a lien on the partnership assets for the amount of the balance of the accounts alleged to have been then settled.

Malins and C. J. Foster, in support of the motion to discharge the orders, and for the payment to Mr. Tristram of the amount of the partnership assets, which had been paid into Court, for the benefit of the partnership creditors.

Roll, Jervis and D. D. Keane, contra.

The Lord Chancellor said, that the lien claimed was not so clear as to induce the Court to interfere at the present stage of the cause, and prevent the appropriation of the partnership assets to the partnership debts. And as to the other order for the examination of witnesses, it appeared there had not been due diligence in obtaining it; and the appeal must therefore be allowed, and both the orders be discharged.

June 11, 13, 14.—*Smith v. Pincombe and others*—Part heard.

— 12, 14.—*In re Northern Coal Mining Company, ex parte Blakely*—Cur. ad. vult.

— 14, 16.—*Robinson v. Geldars*—Part heard.

June 12, 17.—*Attorney-General v. Baines*—Order for discharge of prisoners in contempt for breach of injunction, on entering into recognizances, with exception of one who was to remain in custody until the rising of the Court for the Long Vacation.

—17.—*London and North Western Railway Company v. Bradley*—Appeal allowed from Vice-Chancellor Lord Cranworth.

—17.—*Bentley v. Holloway*—Motion to discharge injunction granted by Lord Chancellor dismissed with costs.

Master of the Rolls.

In re Palmer, ex parte Brett. June 16, 1851.

SOLICITOR.—PETITION TO STRIKE OFF THE ROLLS.

A petition was dismissed with costs to strike a solicitor and Master Extraordinary in Chancery off the Roll for having filed an affidavit to which the petitioner had not duly sworn, where it was not shown the act complained of was wilful and corrupt.

R. Palmer appeared in support of a petition presented by Mr. Robert Brett to strike Mr. George Palmer, of Rugeley, a solicitor and Master Extraordinary of the Court of Chancery, off the Rolls for having filed an affidavit without the petitioner having duly sworn to it.

Roupell, for Mr. Palmer, who admitted there had been two affidavits, one in draft, which had not been sworn to and had not been filed, but that the other had been sworn before it was filed, was not called on.

The Master of the Rolls said, it was clear there were two affidavits both of which had been signed by the petitioner, one of which had not been sworn to and not been filed, and the other had been sworn to previously to filing, and the petitioner had therefore failed to prove his case, and besides had not shown that the act complained of was wilful and corrupt, which alone would authorize so harsh a proceeding as that sought by the petition, which must accordingly be dismissed with costs.

June 11.—*Penruddock v. Hammond and others*—Cur. ad. vult.

—11.—*Leer v. Butterfield*—Decree by consent and reference to the Master.

—12.—*Fristly v. Stafford*—Order by consent for payment of money into Court.

—12.—*London Gas Light Company v. Spottiswoode and others*—Stand over, with leave to add parties.

—13, 14.—*Bolton v. Powell and others*—Bill dismissed with costs.

—14.—*Gundry v. Pinniger and others*—Judgment on construction of will.

—14.—*Reece v. Green*—Part heard.

—16.—*Day v. Croft*—Order on petition in administration suit.

—12, 17.—*Peters v. Bear*—Motion dismissed with costs for order on Commissioner for taking depositions to ascertain depositions taken in cause.

June 17.—*Greenwood v. Churchill*—Cur. ad. vult.

Vice-Chancellor Knight Bruce.

India and London Life Assurance Company v. Dalby. May 9, 1851.

BILL FOR DELIVERY UP OF POLICY OF ASSURANCE.—INJUNCTION TO RESTRAIN ACTION AT LAW.—DEMURRER.

A demurrer was overruled to a bill seeking a declaration that a policy of assurance, effected with the plaintiffs by the defendant, a director in the A. Insurance Company, to secure the latter company against a part of their liability on a policy granted to one W. on the life of C., was void, by reason of the A. company having ceased to be interested therein, upon cancelling their policy and granting a life annuity to W. in its stead, and for an injunction to restrain an action brought on such policy by the A. company, and for the delivery up of the plaintiffs' policy upon the repayment of the premiums, which it appeared the defendant had continued to pay after the cancellation of the policy.

This was a demurrer for want of equity to this bill, which was filed for a declaration that a policy of assurance for 1,000*l.*, effected in Jan. 1847, on the life of the late Duke of Cambridge, by the defendant, as director of the Anchor Life Assurance Company, was void, for an injunction to restrain an action brought thereon to recover the amount of the policy, and for delivery up thereof on the repayment of the premiums. It appeared that the policy was a cross assurance effected to secure a portion of a policy of 3,000*l.* granted to the Rev. J. Wright, on the Duke's life, and that the latter policy had been cancelled in 1848 upon their granting a life annuity in its stead, but the defendant continued to pay the subsequent premiums thereon until the death of his Royal Highness in July, 1850.

Russell and Shapter in support of the demurrer, on the ground that the annuity granted was a sufficient continuance of the interest in the policy, and citing *Thornton v. Knight*, 16 Sim. 509.

The Vice-Chancellor, without calling on J. Parker and W. M. James, contra, said, that the demurrer must be overruled.

Ex parte Sturgis, in re Hemsworth. May 28, 1851.

PETITION FOR PAYMENT TO PROVISIONAL ASSIGNEE OF INSOLVENT COURT, OF ALLOWANCE UNDER BANKRUPT ACT.

The Court, on a petition on behalf of the provisional assignee of the Insolvent Debtors' Court seeking the payment of the allowance made under the Bankrupt Law Consolidation Act, to a bankrupt who had subsequently taken the benefit of the Insolvent Debtors' Act, for the benefit of the creditors under the insolvency, ordered the payment to

be impounded in the hand of the Accountant-General in Bankruptcy, and directed the petition to stand over, with liberty to the petitioner to take such steps as he might be advised.

THIS was a petition on behalf of the provisional assignee of the Insolvent Debtors' Court, seeking the payment over to the creditors under this bankrupt's subsequent insolvency, of his allowance under the 13 & 13 Vict. c. 106, s. 195.

Follett, in support of the petition, which was opposed by *Russell* and *Sturgeon*.

The Vice-Chancellor ordered the money to be impounded in the hands of the Accountant in Bankruptcy, and directed the petition to stand over, with liberty to the petitioner to take such proceedings as he might be advised.

June 11.—*Esparle Smith, in re Coates; Velpy and others, respondents*—Petition dismissed with costs.

— 11.—*Esparle Bell, in re Taylor*—Appeal allowed from Mr. Commissioner Filison, with costs out of the estate.

— 11.—*Esparle Sturt, in re Sturt*—Application of appeal from Commissioner refused.

— 12.—*Letts v. Longman*—Stand over.

— 13.—*Moore v. Darton*—Exceptions allowed to Master's report.

— 16, 17.—*Jones v. Price*—Decree by consent.

— 17.—*Truitt v. Umpleby*—Injunction granted to restrain the use of plaintiff's name.

— 17.—*In re Butterwick Free School*—Motion refused to stay election of master of school until the appointment of new trustees of the charity.

Vice-Chancellor Lord Cranworth.

In re Direct Birmingham, Oxford, and Reading Railway Company, ex parte Hunter. June 5, 1851.

WINDING UP ACTS.—CALL FOR COSTS.—JURISDICTION OF MASTER.

Held, that the Master has not power under the winding-up acts to direct a call to be made on the contributories in respect of the costs of winding up and of the official manager, until he has previously decided in respect of which debts such costs had been incurred; and such an order was accordingly discharged on appeal.

THIS was a motion to discharge an order of the Master for a call on Mr. Hunter, who had been placed in class one of the list of contributories, of 12s. 6d. per share towards the costs of winding up the affairs of the company and of the official manager, no order having been made as to costs.

Roll and *Shapter*, in support, on the ground that the Master could not make a call for costs until he had ascertained in respect of what debts each contributory was liable, as the amount of the costs for which each was liable was in proportion thereto.

Romberg, for the official manager, contra, on the ground that the case of costs was different from debts, and the Master could at any time make an equal call for the costs on all the contributories in proportion to the number of shares.

The Vice-Chancellor said, that the Master could not make a call for costs until he had first ascertained in respect of what debts such costs had been incurred; and also, it would appear, in respect of what debts each contributory was liable, as until that had been done, he had no data upon which he could exercise his discretion, and as the call was to be made so far only as the contributories were liable at law or in equity. The order must therefore be discharged, the costs of the official manager to be paid out of the estate.

June 12.—*Deeks v. Walker*—Motion dismissed with costs for stay of proceedings until after winding up of bank to which the case related.

— 14.—*Preston v. Liverpool, Manchester, and Newcastle-upon-Tyne Junction Railway Company*—*Cur. ad. vult.*

— 16.—*In re Chester and Manchester Railway Company, ex parte Phillips*—Petition for winding up refused.

— 16.—*Navulshaw v. Brownrigg*—Bill dismissed.

— 17.—*Metairie v. Wiseman*—Motion granted by consent to stay proceedings and to take off the record office file, the bill, the answers, information, and affidavits.

— 17.—*Attorney-General v. Cooke*—The like.

Vice-Chancellor Turner.

June 11.—*Beadon v. King*—Stand over.

— 12, 13.—*East v. Tynford*—*Cur. ad. vult.*

— 14.—*Robins v. Hobbs*—Judgment on claim for an account.

— 16.—*Collett v. Morrison*—Issue directed at law.

— 14, 17.—*Daglish v. Jarvis*—Bill dismissed.

— 17.—*In re Hodson's Settlement*—Petition dismissed with costs for appointment of new trustees.

— 17.—*Ecclesiastical Commissioners v. Davies*—An injunction was granted *ex parte* to restrain the defendants from working mines, fields, or strata, leading under certain copyhold premises purchased by plaintiffs.

Queen's Bench.

Powell v. Shaw; In re Flewker, of Derby.
June 9, 1851.

ATTORNEY.—MOTION TO STRIKE OFF THE ROLL.—SUSPENSION FROM PRACTICE.—AFFIDAVITS OF INCREASE.

The Court, upon a motion to strike an attorney off the Roll for swearing, in an affidavit of increase made on the taxation of costs in a cause, to payments to the witnesses,

when in some of the cases he had in fact only advanced money to a third party for the purpose, and in another only given a verbal promise to pay, directed the attorney to be suspended from practising for the space of one month, and that he should pay all the costs of the investigation; and expressed their disapprobation of the laxity prevailing in regard to affidavits of increase.

THIS was a rule nisi to strike Mr. John Flewker, of Derby, an attorney, off the Rolls of this Court, on the ground of swearing, in an affidavit of increase upon the taxation of costs in the above cause, that he had made certain payments to the witnesses, whereas it appeared from the affidavits in reply to the charge that he had advanced moneys to the plaintiff to pay the witnesses, and supposed upon his assurance they had been paid. It appeared, also, that one of the witnesses, named Neale, had not received the 5*l.* 13*s.*, which had been sworn to have been paid him, and only claimed 4*l.* 13*s.*, but that Mr. Flewker had only given him a verbal promise to pay him the former amount to which he considered the witness entitled. The affidavits having been referred to Master Sir Archer Denman Croft, his report was now read to the Court.

Sir F. Thesiger and Hayes showed cause against the rule; M. Chambers and M. Smith in support.

Lord Campbell delivered the judgment of the Court, and said,—We find there is a rule depending why Mr. Flewker should not be struck off the Roll of Attorneys of this Court. This has been referred, with all the affidavits, to the Master. He has made a most elaborate and perspicuous report, and I entirely agree in the result at which he has arrived, that the charge of gross and deliberate fraud has been answered, therefore Mr. Flewker will not be struck off the Roll of Attorneys of this Court. But I likewise agree that his conduct in swearing to the payments of witnesses, when in fact he had merely advanced money to a third party in order to pay them, is such as he must have known to have been highly reprehensible, and especially with regard to Neale's case, the swearing to a payment when he had only, on his own statement, given a verbal promise to pay, and swelling the amount of the payment beyond the sum claimed by the witness himself, is such conduct in an attorney as deserves the serious consideration of the Court. We have given it our serious consideration; we think the conduct of Mr. Flewker is highly reprehensible. Great laxity has prevailed, with regard to affidavits sworn, increasing the costs.

We have again and again expressed our disapprobation of that laxity. We have, as yet, done nothing to do away with the practice, and we are sorry to see it has not been reformed. There is, likewise, another practice which we have reason to believe to prevail, that brings discredit on the administration of justice, namely, that the attorney for the victorious party tries to inflate the costs against the

other side as much as possible, and above all to bring in a heavy charge on the other side in respect of the attendance of witnesses. The expense of the attendance of witnesses on a trial is an expense which must inevitably fall on the losing party, no improvement in legislation can ever obviate that necessity. But it ought to be a moderate charge, and only such as is necessary for the attendance of the witnesses, whereas there is reason to think that it is the object of the triumphant attorney to put money into the witnesses' pockets, and to acquire for them the great victory he has obtained. With a view to mark our disapprobation of this practice, we think it our duty to pronounce this rule,—that Mr. Flewker be suspended from his practice of an attorney for the space of one month, and that he pay all the costs of this investigation.

Regina (ex parte Bailey) v. South Devon Railway Company. May 30, 1851.

RAILWAY COMPANY.—MANDAMUS TO MAKE BRANCH LINE.—EXPIRATION OF POWERS UNDER ACT.

The Court refused a rule nisi for a mandamus on a railway company, upon the application of a landowner to whom they had given notice that the land would be required for the railway, to make a branch line where it appeared that before the mandamus could be made peremptory, the general powers of the company under their act would expire.

THIS was a motion for a rule nisi for a mandamus on the defendants to construct the branch railway to Sutton Pool. It appeared that the act authorising the construction of the railway passed on August 28, 1846, and that the company were empowered to put in force the compulsory taking of land for three years, and which therefore expired in August, 1849, and their general powers for making the line would expire on August 28th next. The company had given notice to Mr. John Bailey, in January, 1847, of his lands being required for the purposes of the railway, and similar notices it appeared had been served on the other landowners on the line.

A. J. Stephens, in support of the motion, cited *Walker v. Eastern Counties' Railway Company*, 6 Hare, 594.

The Court said, that the rule must be refused, as before the mandamus could be made peremptory the general powers of the company to construct the line would have expired.

June 11.—*Regina v. Haslem and others*—On appeal from order of Quarter Sessions confirming poor-rate, judgment for respondents.

— 11.—*Holloway v. Regiam*—On writ of error, conviction affirmed.

— 11.—*Regina v. Bassett and another*—Judgment for defendants.

— 12.—*Stichel v. Chamberlain*—Rule absolute to rescind judge's order disallowing costs of certain witnesses.

June 12.—*Regina v. Milles and another*—Rule discharged for mandamus on defendants to re-hear information against persons refusing to obey order for removal of obstruction.

— 13.—*Chelsea Waterworks Company v. Bowley*—Judgment for plaintiffs.

— 13.—*Regina v. Amos*—Rule discharged with costs for criminal information against defendant for improper conduct in office of County Court judge.

— 13.—*Regina v. Lancashire and Yorkshire Railway Company*—Rule absolute for mandamus on defendants to construct branch line.

— 13.—*Regina v. Ambergate, Nottingham, Boston and Eastern Junction Railway Company*—Rule absolute for mandamus on defendants to complete railway.

— 14.—*Berg v. Brown*—Rule absolute to enter a nonsuit, the plaintiff to pay such costs as would be payable on a new trial granted on the ground of the verdict being against evidence.

— 14.—*Regina v. Justices of Warwickshire*—Rule absolute on defendants to issue warrant of distress under the Leamington Improvement Act.

— 16.—*Roe v. Maser*—Rule absolute for new trial.

— 16.—*Regina v. Griffiths*—Rule absolute, without costs, for *quo warranto* to clerk to guardians of the poor of St. Martin's in the Fields.

— 16.—*Regina v. Justices of Newbury*—Rule absolute, with costs, on justices to issue warrant of distress for rate.

— 16.—*Regina v. Blackstone*—Rule discharged, without costs, for criminal information for libel.

— 17.—*Snowright v. Archibald*—Nonsuit to be entered, if plaintiff wished to bring new action; or special verdict given or bill of exceptions tendered, if writ of error brought.

— 17.—*Tarleton v. Liddell*—On issue from Court of Chancery, judgment for plaintiff.

— 17.—*Regina v. Garland*—*Cur. ad. vult.*

— 17.—*Regina v. Sale*—Rule absolute on defendant for mandamus to admit chaplain to exercise his duties in parish church.

— 17.—*Regina v. Governors, &c. of St. James, Westminster*—Rule absolute for mandamus.

— 11, 17.—*Regina v. Poor Law Commissioners*—Rule discharged for certiorari to bring up order of defendants in order to be quashed.

— 17.—*Duke of Brunswick v. Harmer*—Rule discharged on defendant to pay taxed costs of first trial.

— 17.—*Regina v. Robinson*—Rule discharged.

Queen's Bench Practice Court.

June 11.—*Regina v. Inhabitants of St. Faith, Hants*—Rule nisi for mandamus on defendants to convene meeting for election of churchwardens.

— 12.—*Regina v. Bradbury and another*—Rule nisi for criminal information for libel.

— 13.—*In re Cutts*—*Cur. ad. vult.*

— 13.—*Jones and wife v. Curry and wife*—

Rule nisi for prohibition to Judge of Surrey County Court.

— 13.—*Regina v. Askew*—Prisoner discharged.

— 14.—*In re William Vardy Eyre*—Rule absolute on attorney for payment of moneys.

— 16.—*Banks v. Robbuck*—Rule absolute for prohibition to Judge of Whitechapel County Court.

— 16.—*Gell v. Fowler*—Rule discharged for new trial.

— 16.—*Regina v. Bradbury and another*—Rule for criminal information for libel discharged upon payment of costs.

— 17.—*Regina v. Churchwardens of Bangor*—Rule nisi for mandamus on defendants to convene meeting of ratepayers for payment of money for lighting and watching the town.

— 17.—*Regina v. Caudwell and another*—By arrangement, cause to be tried at Abingdon instead of Oxford.

— 17.—*Regina v. Piper*—Rule nisi for *quo warranto* on guardian of poor of Exeter.

— 17.—*Regina v. Plamplin*—Rule for certiorari on Recorder of Winchester to return indictments into this Court.

Court of Common Pleas.

Doe dem. Hutchinson v. Hurst. June 16, 1851.

RULE FOR DISCHARGE OF PRISONER UNDER 48 GEO. 3, C. 123. — ACTION OF EJECTMENT.

A rule was made under the 48 Geo. 3, c. 123, for the discharge of a prisoner from prison, who had been in custody for more than 12 calendar months on a judgment in an action of ejectment, in which the lessor of the plaintiff obtained a verdict, with 1s. damages and costs, and it was granted without imposing terms on the prisoner, notwithstanding it appeared that the action was brought in respect of lands of which he had obtained possession as purchaser without having paid the purchase money, and he refused either to pay the purchase money or to rescind the contract.

THIS was a motion for a rule under the 48 Geo. 3, c. 123, to discharge the defendant, who was in York Castle, from custody. The action was in ejectment, and the lessor of the plaintiff had obtained a verdict, with 1s. damages and costs, and the defendant had been in custody for three years under the judgment. By s. 1 of that statute it is provided, that "all persons in execution upon any judgment, in whatsoever Court the same may have been obtained, and whether such Court be or be not a Court of Record, for any debt or damages not exceeding the sum of 20*l.*, exclusive of the costs recovered by such judgment, and who shall have lain in prison thereupon for the space of 12 successive calendar months next before the time of their application to be discharged as hereinafter mentioned," shall upon their "application for that purpose in Term time made to some one of his Majesty's Superior Courts of Record at Westminster, to the satisfaction

of such Court, be forthwith discharged out of custody."

Woollett in support.

Hall, contra, on the ground that the action had been brought to recover a piece of land of which the defendant took possession without paying the purchase money, and that after the judgment in the action, the defendant had filed a bill in Chancery for a specific performance of the contract, under which a conveyance had been settled by the Master and a day fixed for payment of the purchase money, and the defendant refused either to pay the purchase money or to rescind the contract.

The Court however said that the statute was imperative, and as the facts were not disputed, the rule must be granted.

June 11.—*Monnt v. Hope*—Rule nisi for new trial on the ground of surprise, on payment of amount of verdict into Court, and of the costs of the former trial, and on agreeing to change venue from Middlesex to London.

—12.—*Harrison v. Montgomery and others*—Rule refused for new trial.

—13.—*Thompson v. Haworth*—On special case, judgment for defendant.

—13.—*Abley v. Dale*—Rule absolute for new trial on payment of costs.

—14.—*Crofts v. Beale*—Rule discharged for new trial.

—12, 16.—*Williams v. Lords Commissioners of the Admiralty*—Rule discharged with costs, to set aside writ of summons and service on the ground of irregularity.

—13, 16.—*Helsham v. Blackwood and another*—On demurrer to replication in information for libel, judgment for plaintiff but matter subsequently compromised on payment of costs.

—16.—*Farnell and another v. Crawley and another*—Cur. ad. vult.

—16.—*Marshall v. York, Newcastle, and Berwick Railway Company*—Rule discharged, without costs, for attachment against witness for disobedience to subpoena.

—17.—*Skelton v. Springetts*—Rule absolute to enter a nonsuit.

—17.—*Dews v. Riley*—Rule absolute to enter a nonsuit.

—17.—*West London Railway Company v. London and North Western Railway Company*—Rule absolute for new trial on the ground of misdirection.

Court of Exchequer.

Micklethwaite v. Winter. June 2, 1851.

INCLOSURE ACT.—RIGHT OF LORD OF MANOR TO STONES QUARRIED BY ONE OF THE COMMONERS IN LAND ALLOTTED.—"MINERALS."

Under the act, passed in the 33 Geo. 2, for the inclosure of the common lands of the manor of Ardsley, in the West Riding of Yorkshire, an allotment was made to the lord of the manor of such parcel and quan-

tity of land as should be a compensation for his right to and in the soil, and also for the damage and injury he would sustain by being obliged to make satisfaction to the proprietors of the land intended to be enclosed, for the digging for "coals or minerals" within the said common lands. One of the commoners having dug out of his allotment a quantity of flagstones and grindstones; Held, on special case, that the plaintiff, in whom all the rights of the lord of the manor vested, was entitled to recover in trover for the value of the stones so quarried by the defendant.

THE plaintiff in this case was lord of the manor of Ardsley, in the West Riding of Yorkshire, and his ancestor was lord of the manor when the 33 Geo. 2, (1760), under which the common lands of the manor were inclosed, passed, and entitled to all the coals and minerals under the common, subject to certain commonable rights. By that statute it is provided, that a certain allotment should be made to the lord of the manor "as in the judgment of the said Commissioners shall appear to them a satisfaction and compensation" "for his right as lord of the manor of Ardsley aforesaid to and in the soil, of the said common or waste lands, and also to and for the damage and injury he will sustain by being obliged to make satisfaction as hereinafter mentioned to the proprietors of the lands so intended to be inclosed, for the digging for any coals or minerals within the said common lands and grounds."

It appeared that the defendant, who was one of the commoners, had dug a quantity of flagstones and grindstones out of his allotment, whereupon the plaintiff brought this action of trover to recover the value of the same, which now came on in the form of a special case for the opinion of the Court.

Knowles, for the plaintiff; *Cowling*, for the defendant.

The Court held, that the right to dig for "coals or minerals" remained in the lord, under the Inclosure Act, and that the stones which the defendant had quarried came under the denomination of "minerals;" *Earl of Bute v. Watsman*, 14 M. & W. 859, and gave judgment for the plaintiff.

June 10.—*Trumpier v. Lockett*—Rule absolute for new trial.

—11.—*Ryan (a pauper) v. Shilcock and another*—Rule nisi to enter verdict for plaintiff for 6l.

—11.—*Cassan v. South Eastern Railway Company*—Cur. ad. vult.

—13.—*Harvey v. Toppers*—Rule absolute to enter a nonsuit.

—12, 14, 16, 17.—*Attorney-General v. London Dock Company*—Cur. ad. vult.

—14, 17.—*Parker v. Bristol and Exeter Railway Company*—Rule refused to set aside verdict for plaintiff and enter a nonsuit.

—17.—*Williams v. Haldenorth*—Rule enlarged.

17. *Dyer v. Adams*—Rule discharged to enter judgment as in case of nonsuit.

Court at Exchequer Chamber.

Cleave v. Jones. May 17, 1851.

STATUTE OF LIMITATIONS.—EVIDENCE OF PAYMENT OF INTEREST ON DEBT WITHIN SIX YEARS.

Held, on bill of exceptions to the ruling of L. C. B. Pollock and overruling the case of *Willis v. Newham*, 3 You. & Jer., Exch., 518, that under the 9 Geo. 4, c. 14, an entry in an account-book of the defendant, in his own handwriting, of payment of interest on a promissory note within the statutable period was sufficient to prevent the operation of the statute.

And held, also, that verbal evidence is admissible of such payment on account.

To an action brought to recover the amount of a promissory note, the defendant pleaded the Statute of Limitations. On the trial before the Lord Chief Baron, evidence was produced for the plaintiff, to take the case out of the statute, of an entry in the account-book of the defendant, in his own handwriting, of payment of interest on the note within the six years, but the learned Baron having on the authority of the case of *Willis v. Newham*, 3 You. & Jer., Exch. 518, decided that it was not sufficient to prevent the operation of the statute, a bill of exceptions was tendered and accepted.

Resting, for the plaintiff, now appeared in support; *Groves*, for the defendant, contra.

The Court said, the 9 Geo. 4, c. 14, recited

in the preamble, the 21 Jac. 1, c. 16, the English act and the Irish act, 10 Car. 1, Sess. 1, c. 6, and that "various questions have arisen in actions founded on simple contract, as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments," and then enacted that "in actions of debt, or upon the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new and continuing contract, whereby to take any case out of the operation of the said enactments or either of them, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby." Before the passing of this statute three modes were held under the 21 Jac. 1, c. 16, to take a case out of the operation of the statute: first, an acknowledgment by words; second, a promise by words; and third, the payment of part of the principal or interest. The effect of the later act was clearly confined in words to promises or acknowledgments only, and did not affect the case of payment of principal or interest, which was left exactly as it was before the statute passed, and besides there was a proviso that "nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever." And although the effect of the decision will be to let in verbal evidence of payment on account, the case of *Willis v. Newham* must be overruled, and judgment be given for the plaintiff.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Lunacy.

[For the previous Sections of the Digest of this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.]

COMMITTEES.

1. *Resident at distance.—Removal.*—It is no objection *per se* to the committees of the estate of a lunatic, that they reside at a distance from the lunatic's estate. *In re Brown*, 1 H. & T. 348.

2. *Reference to Master.—Sanction of Lord Chancellor.*—The 13th of the General Orders in Lunacy, of October, 1842, merely authorises in certain cases, a reference to the Master in Lunacy, without a previous order of reference, from the Lord Chancellor: but the report of the Master cannot be acted upon until it has received the sanction of the Lord Chancellor. *In re Brown*, 1 H. & T. 348.

3. *Removal of.—Excess of authority.*—Where committees had exceeded their authority by

expending large sums in draining, and in entering into an agreement with a railway company respecting the mode in which the railway should pass through the lunatic's estate, and in other particulars, but all those acts had been sanctioned by the Master in Lunacy, the Court refused to remove the committees. *In re Brown*, 1 H. & T. 348.

4. *Passing accounts.—Re-opening.*—The accounts of a lunatic's estate had been regularly passed before the Master in Lunacy, by the committees, in the presence of a solicitor, who acted for the mother of the sole heiress-at-law, and sole next of kin of the lunatic—the heiress, an infant, residing with her mother, and not having had any guardian appointed. A petition afterwards presented in the name of the infant heiress-at-law by her mother, who had then been appointed guardian by the Court of Chancery, to have the accounts re-opened, was dismissed with costs. *In re Brown*, 1 H. & T. 348.

5. *Contract for sale of land to railway company.*—The sanction of the Lord Chancellor ought to be obtained in all cases, by the committees of a lunatic, to a contract for sale of

any portion of a lunatic's land to a railway company. *In re Taylor*, 1 H. & T. 432.

See *Marriage*; *Mortgage*, 1; *Management of Person*: *Railway*.

FOREIGN JURISDICTION.

Property of lunatic.—The Lord Chancellor has no jurisdiction under the 34th section of the 1 Wm. 4, c. 65, to deal with the property of a party declared lunatic by a foreign jurisdiction, except only in conformity with the laws of the country where the lunatic had been declared. *Newton v. Manning*, 1 M'N. & G. 362.

MANAGEMENT OF PERSON.

Residence.—Principles on which the Court acts in providing for the personal management of a lunatic with reference to the amount of his income, and the desirableness of his residing in his own house or at a lunatic asylum; and also in allowing expenses incurred by the committees, irregularly and without authority, but by mistake, and with the sanction of the Master in Lunacy. *In re Brown*, 1 H. & T. 348.

MARRIAGE.

1. *Proposed settlement of lunatic's child*.—*Consent of Lord Chancellor*.—Where a proposed settlement on the marriage of the only child of a lunatic tenant for life would have the effect of excluding the brother of the lunatic, and of enabling her to give the hereditaments to her husband in preference to her issue, the Lord Chancellor, as protector of the settlement, refused to give his consent to such an arrangement. *In re Graydon*, 2 H. & T. 182; 1 M'N. & G. 655.

2. *Separate receipt*.—Order made for payment of lunatic's maintenance to a married woman (committee of the person) on her separate receipt, her solicitor undertaking that the money should be duly applied. *In re Edwards*, 2 M'N. & G. 134.

MORTGAGEE.

1. *Ad interim committee*.—An *ad interim* committee will not be ordered to execute a re-conveyance of an estate vested in the lunatic as mortgagee. *In re Poulton*, 1 H. & T. 476.

2. *Purchaser*.—*Title*.—*Semble*, the Order of the Lord Chancellor, under the 5th sect. of the stat. 1 Wm. 4, c. 60, confers no title on a purchaser of mortgaged hereditaments under a power of sale, where the purchase money exceeds 700*l.*, although the total amount due and payable beneficially to the estate of the lunatic (not found so by inquisition) is less than that sum; but the Lord Chancellor, on the petition of the receiver of the lunatic's estate, (the purchaser consenting to take the title,) directed a reference to the Master, to inquire whether the lunatic was a mortgagee, what sum was due on the mortgage, whether the sale that had been made was a proper one, and what sum would be coming to the lunatic mortgagee on its completion. *In re Sandford*, 2 H. & T. 137; 1 M'N. & G. 538.

3. *Confirming report*.—*Chets out of trust estate*.—In the case of a petition by a mortgagor,

seeking to confirm the Master's report as to a lunatic mortgagee, and a re-conveyance of the mortgaged premises, and appointment of new trustees, there being no proof that the mortgagor was aware of the lunatic being a trustee, the costs of and incidental to the application were ordered to be paid out of the trust estate. *In re Townsend*, 2 H. & T. 185; 1 M'N. & G. 686.

PROTECTOR OF SETTLEMENT.

Barring entail.—*Hereditaments in Wales*.—Where the protector of a settlement resides in Ireland and is a lunatic, the Lord Chancellor of England, and not the Lord Chancellor of Ireland, is authorised by the 3 & 4 Will. 4, c. 74, to consent, in his stead, to the barring of the estate tail and the remainders over in hereditaments which are situate in Wales—*semble*. *In re Graydon*, 2 H. & T. 182; 1 M'N. & G. 655.

RAILWAY.

Costs of reference to Master as to propriety of contract.—The costs and expenses incurred under and incidental to an order of reference to the Master in Lunacy, to inquire into the propriety of a contract entered into by the committees of a lunatic with a railway company, for the sale of a portion of the lunatic's lands, were directed to be paid by the company under the 80th section of the Land Clauses Consolidation Act, 1845. *In re Taylor*, 1 H. & T. 432.

SALE OF REVERSIONARY INTEREST.

On the petition of the committee of the person and estate of a lunatic, reference directed to inquire as to the expediency of raising a fund for his maintenance by sale of his reversionary interest in realty. *In re Burbidge*, 3 M'N. & G. 1.

TRANSFER OF STOCK.

Curator of a Scotch lunatic.—Application by the curator bonis of a Scotch lunatic for the transfer of stock standing in the lunatic's name in the Bank of England refused; the Lord Chancellor not being satisfied that the security given by the curator in Scotland was sufficient, and holding that it was a matter of discretion to refuse or accede to the application.

Terms of order of reference to the Master in such a case, the decret of the Scotch Court appointing the curator not being sufficient to establish the lunacy under the terms of the acts 1 & 2 Geo. 4, c. 15, and 1 Will. 4, c. 65. *In re Stark*, 2 M'N. & G. 174.

Case cited in the judgment: *In re Morgan*, Coram Lord Cottenham, March 23, April 27, 1849.

TRUSTEE.

In place of lunatic.—On petition under the act 1 Will. 4, c. 60, the Court never interferes in the administration of the trusts, but merely substitutes a trustee in the place of the lunatic. *In re Ward*, 2 M'N. & G. 73; *In re Foster*, 1b. 73, n.

See *Mortgagee*, 3.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JUNE 28, 1851.  
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LORD DENMAN, THE BAR, AND THE COUNTY COURTS.

THE late Lord Chief Justice of the Court of Queen's Bench, in the enjoyment of his well-earned retirement, regards with philosophic composure, what he is pleased to describe as, "the destitution of the Bar!" In a letter, addressed to Lord Brougham, and publicly read at a recent meeting of the Law Amendment Society, Lord Denman thus summarily refers to the wholesale transfer of causes from the Superior Courts to the inferior tribunals, as an accomplished fact, and the ruin of the Bar as already consummated.

"I take the fact to be clear that the public decidedly prefers the County Courts to the Common Law Courts in Westminster Hall for the trial of causes. The proof of this fact, that the former tribunals swarm with suitors, while the latter are almost deserted, involves another fact of a more general nature,—the destitution of the Bar;—the ruin of many now in business;—the disappointment of many more in their just expectations; and finally, the annihilation of a most valuable class of society as it has existed for the advantage of the public.

"If the interest of the Bar come in competition with that of the public, there cannot be one moment's hesitation as to which must be sacrificed. Neither that nor any other set of men has any vested right in misgovernment or mal-administration,—no privilege to defeat, or even to delay for a single hour, well-considered improvements. Could we suppose a legal system so perfect and so justly appreciated, that all persons would spontaneously act right on all occasions, from knowing that otherwise the law would force them promptly to do so, and the community would enjoy the greatest blessing ascribed by Homer to the rule of Augustus,—"foram litibus orbum,"—the barrister must turn his powers to some other account, nor breathe a murmur, nor ask a farthing of compensation, still less demand the restoration of the bad old system."

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Without staying to inquire to what extent the number of applicants to the County Courts can fairly be considered as a proof of the favour with which those institutions are regarded by the public, or whether the injury done to the Bar as a body is not somewhat exaggerated, we pass on to the indisputable proposition embodied in the paragraph last cited from Lord Denman's letter,—that "if the interest of the Bar comes in competition with that of the public, there cannot be one moment's hesitation which must be sacrificed." Admitting this principle without qualification, and extending its application to the legal profession in all its branches, we ask in what respect are the legitimate interests of the profession antagonistic with the real interest of the public? It concerns the highest and best interest of the public, that the law should be well and wisely administered, by able, experienced, and upright judges. It is important to the suitors in the Courts of Justice, that their causes should be prepared for hearing by persons of integrity and competent skill and knowledge, and that their rights should be entrusted to the advocacy of men of capacity and honour. It is desirable that justice should be done with as little delay as possible, and at as little expense to the suitors as is consistent with the proper investigation of their cases, and the discouragement of such as are frivolous or unfounded.

Who can say, that the interest of the profession is at variance with that of the public in any of those particulars? No fallacy is more transparent than that which proceeds upon the assumption that it is beneficial to any branch of the legal profession that the proceedings of Courts of Justice should be either dilatory or expensive? The profession and the public are alike sufferers by the law's delay, though it may be in un-

equal proportions; and the public, still more than the professional man, is interested in having the latter reasonably and adequately compensated for his services, but both are disadvantageously affected by rendering the proceedings of the Courts costly.

Now let us examine in what respects the County Courts are preferable to the Superior Courts. A large proportion of the County Court Judges are little known beyond their own districts, but the most enthusiastic of their admirers, we apprehend, would hardly venture to put them, as regards judicial character and attainments, on a footing with the Judges of the Superior Courts. It would be an insult to the educated professional man to institute any comparison between him and the discreditable race who have taken his place, and to whose assistance the suitor is compelled to resort in the County Courts. As the judges and practitioners are decidedly inferior, it is not too much to assume that justice is not better administered in the County Courts than in the Superior Courts.

But then it is said, the suitor in the County Court gets justice, such as it is, more quickly and at a much cheaper rate than he could do at Westminster Hall. Be it so,—as already observed, these matters in which the profession and the public have no conflicting interest: unnecessary delay and expense are as detrimental to the one as the other. We agree to a considerable extent with Lord Denman, that “the evil points out its own remedy.” Not having, like his lordship, acquired the zeal of a fresh convert, we should hesitate to recommend the doubtful experiment of requiring the Judges of the Superior Courts to determine cases merely upon hearing contradictory statements from the mouths of adverse and excited litigants. Under such a system, it seems impossible that the most acute and patient judge can guard himself against overlooking the real point; and where this is the result, although there may be cheapness and speed, there cannot be justice. We entirely concur with the late Lord Chief Justice, however, that the Superior Courts may be rendered more accessible by diminishing expense and delay, and we participate in the general regret that those, who were placed in a position to give their suggestions the weight of authority, have so long neglected to recommend the abolition of Court fees, and by other obvious improvements facilitate the administration of justice in the Superior Courts of Law.

Perhaps it will excite little surprise that a portion of the Bar, with energies and exigencies somewhat more irrepressible than those of the distinguished and venerable Lord Denman, should think it possible to work out their professional salvation by means very different from those he suggests. Instead of improving the procedure of the Superior Courts, so as to enable them to maintain a successful rivalry with the newly established tribunals, the body to whom we refer purpose making the County Courts the field of their future glory. The first step, in advance, it is supposed, will be gained by inducing the legislature to sanction the idea that it is essential to the interest of the community that the Bar should obtain exclusive audience in the County Courts. To effect this object, urgent solicitations have been tried and every conceivable description of influence put in operation, and if the boastful assertions of those actively engaged in the canvass can be relied on, with the prospect of assured success. The legislative declaration, which it is expected will afford such a vantage-ground to the Bar, it is proposed to embody in a clause to be introduced in the County Courts’ Extension Act, now depending in the House of Commons. The proposed clause itself, with the reasons which it is supposed justify its adoption, have been extensively circulated amongst the members of both Houses. The suggested clause is in these terms:—

“And whereas by an act passed in the 10th year of the reign of her present Majesty, intitled, &c., it was enacted, that no person should be entitled to appear for any other party to any proceeding in any of the said Courts, unless he be an attorney of one of her Majesty’s Superior Courts of Record, or a barrister-at-law instructed by such attorney on behalf of the party, or, by leave of the judge, any other person allowed by the judge to appear instead of such party; but that no barrister, attorney, or other person, except by leave of the judge, should be entitled to be heard to argue any question as counsel for any other person in any proceeding in any Court holden under that act, be it enacted that the said provision shall not be deemed or construed to apply to any case within the jurisdiction given to the said Courts by this present act, or by any other act other than the above partly recited act; and that in all cases in which jurisdiction is given to the said Courts by the present act, or by any other act other than the above partly recited act, barristers-at-law and attorneys shall have and enjoy such rights and privileges as have been hitherto used and exercised by them respectively in the Superior Courts of Common Law at Westminster.”

The expediency of conferring the privilege of exclusive audience on the Bar having been once recognised by the legislature, it is avowedly intended to increase the jurisdiction of the County Courts to an unlimited amount, to confer upon them an extensive Equity jurisdiction, and to convert the Superior Courts at Westminster into mere appellate tribunals.

Believing this scheme to be based upon narrow and mistaken views, and that its success would be detrimental to the legal profession as well as to the public, we may venture to express a hope that no portion of it will obtain parliamentary approval or support.

As some of our readers may be curious to learn upon what grounds the claim to exclusive audience in the County Court proceeds, we subjoin the *reasons* (copied from the printed document) and annexed to the clause intended to be proposed in the House of Commons:—

"1. In consequence of the extension of the jurisdiction of the County Courts a large proportion of the business has been transferred from Westminster Hall to these Courts, and has thereby almost destroyed the school in which the junior Bar formerly gained their experience.

"In consequence of the increasing favour with which these Courts are regarded by the public, it is probable that the jurisdiction will be still further increased to the further diminution of the business in the Superior Courts.

"It, therefore, becomes a matter of grave consideration whether it is desirable for the state to lose the advantage of having a large body of men of educated and disciplined minds, who, from their fitness, have been hitherto largely appointed to fill various offices in the state, and thus to deprive itself of that class from which the future judges, as well of the Superior as of the County Courts would be selected.

"2. Under the County Courts' Act a practice has arisen for attorneys to conduct suits, not only for their own immediate clients, but also as advocates for other attorneys; and as under the previous limited jurisdiction of the County Courts the cases were not of sufficient importance to command the attendance of a Bar, these advocate attorneys have obtained possession of the Courts, and it is now a matter of complaint by many of the attorneys, who do not usually practice there, that they are compelled to hand their briefs to those advocates, thereby incurring a great risk of losing their clients, and of affording information which may, on other occasions, be used to the prejudice of the client.

"3. Barristers are amenable to the Inns of Court for the honourable discharge of their duty, and in many cases would be disbarred

for misconduct, for which the Court would not strike an attorney off the Roll.

"4. It would be a great public advantage to have a competent Bar attending the County Courts, as well from the assistance which they alone are able to give to the judge, as from the check which they would impose upon him in the execution of his duty.

"These and other reasons of a public nature, which will readily suggest themselves, will probably be considered of such importance as to outweigh the disadvantage of the small increased expense which the employment of counsel would entail upon the suitor, the fee allowed by the act in no case exceeding two guineas."

REGISTRATION OF ASSURANCES.

THE House of Lords has determined to pass this bill with "all its imperfections on its head," expunging the last vestige of even a prospective *Map* and *Land Index*, though averred by the Commissioners to be of the very essence of the plan. The House of Commons will soon be called on to express its opinion, both on the general principle and the practical details of the measure. The solicitors, both in town and country, have faithfully discharged their duty to their clients by pointing out the objections which their knowledge and experience suggested. It has been no question of personal interest to the practitioners. Their interest is indeed intimately connected with that of their clients, but, on the present occasion, the emoluments of the solicitors on conveyancing transactions will certainly be increased beyond the period of the present generation. When the whole property of the kingdom has changed hands and all the new owners necessarily appear on the register,—and when a perfect *Map* of every rood of land has been formed,—and when a perfect, intelligible, and easily accessible *Index* has been compiled,—then the expense of investigating titles may be diminished, and some legislator, sixty years hence, may devise a scheme for transferring or charging land (if trusts be disregarded) like stock in the bank books. But even then, there will be errors, neglects, and frauds, to the injury of the real proprietors quite as numerous as now.

Let us proceed, however, to consider the alleged amendments in the bill since it left the Select Committee. They are principally as follow:—

1st. That registration may be effected by the deposit of a *copy* of the deed. This was intended to remove the natural aversion

of every owner to part from his original deeds as evidence of his title. 2nd. That an equitable loan may be effected by depositing a *certificate of registration*. It is supposed that these transactions may thus be speedily and economically conducted.

1. It being asserted in the debate that registration would be allowed by depositing a *copy* of the deed, we looked carefully through the bill as amended in committee and ordered to be printed on 16th June, 1851, but can find *no such clause*. It is true that, under the 57th section of the amended bill, the stamp may be put upon either the deposited or the retained *duplicate*. The bill, as originally framed, required the stamp to be put on the deposited deed only. But both deeds are still to be duplicate originals, and the effect of a duplicate original is essentially different from that of a mere copy. The duplicate original deposited in the Register Office will enable the owner to dispose of the property without producing or giving up his own duplicate. A copy would not have that effect. It will not be evidence till it is shown that the original has been lost or destroyed, in which case a copy duly authenticated would be evidence of its contents. The deposit of a duplicate in the Register Office, therefore, would make the owner's duplicate of no more value to him than a copy, because his possession of it would not show the property to be still his own. The deposit of a mere copy would leave the owner still in possession (as he ought to be) of the *only original* deed: the possession of which would therefore continue to be (as it is now) a *proof of his title*. But the compulsory deposit even of a copy (though less objectionable than a duplicate) is still highly objectionable; both on the ground of expense and of liability to exposure.

2. The next amendment relates to the *equitable deposit of deeds with bankers and others*.

The new clause providing for these deposits is the 52nd. A certificate issued under that clause will, for the purpose of a deposit, represent the *depositor's own deed* of conveyance, and no more. It will afford no proof that the estate is not already under mortgage by a former proprietor, or under settlement, or charged with an annuity, legacies, &c., and will therefore be a *widely different security* from the deposit of a regular series of title-deeds, carrying back the title for a number of years, and show-

ing it to be good and unquestioned. We question whether bankers will rely on this new kind of deposit. In order to place them in as secure a position as they are in under the present system, they must have another certificate under section 61, showing what deeds are already on the register, and must either have those deeds, or duplicates, or copies of them produced, or must search the Register Office in London to ascertain their contents. But there is another difficulty unprovided for by the last amendment: A landowner, whose conveyance was made prior to the commencement of registration, and is therefore not registered, can have no certificate under the 52nd section; and, therefore, if he wants to deposit his deeds as security for a loan, there must be a registered memorandum under sections 49 to 51, with all the delays and inconveniences of previous searches. It would be far more simple, speedy, and economical, to leave parties in possession of their own title deeds to deposit, or deal with, as they please, than to impose them in London, and deliver out these unsatisfactory substitutes for them.

3. By other alterations, attorneys of five years' practice are rendered eligible as assistant registrars; and the registrar in forming districts must have the concurrence of persons appointed by Royal Warrant to act with him.

4. The registrar also may issue transferable tickets or licenses of search at the instance of the parties whose property is registered, and regulations are to be made as to searches, with the view, no doubt, of preventing improper inspections. This will be a difficult part of the machinery. These and other regulations are to be approved, not only by the Lord Chancellor and the Master of the Rolls, but (as now provided) by two Judges of the Common Law Courts.

The difficulties of indexing with sufficient accuracy under a system which makes the *safety* of a title *entirely dependent* on the *index* are in no degree removed or lessened by the amendments. There will still continue the dangers of mistake, as well by the Registrar and his officials as by the parties or their solicitors or agents. There will still be the liability to fraud which no diligence can prevent, and therefore the amount of injury now so rarely sustained by landowners will not be diminished.

CHANCERY APPEAL JUDGES.

It will have been observed by the analysis of the *Chancery Administration of Justice Improvement Bill*, at p. 131, *ante*, that the salaries of the Appeal Judges are to be paid out of the interest of the Sutors' Fund. This will be a further burden upon the property of the suitors, of £2,000*l.* a year which ought to be paid out of the Consolidated Fund. Several of the Law Lords, as well as distinguished members of the House of Commons, have declared their conviction of the injustice of taxing the suitors to pay the expenses of administering justice. Whatever may be the opinion in regard to the salaries of masters, registrars, &c., it is clear that the Equity Judges, like the Common Law, should be paid by the State, and we trust that this necessary amendment will be made in the Committee.

THE CHARITABLE TRUSTS BILL.

We hid before our readers a concise analysis of this bill in a recent number, (see p. 113, *ante*.) We have since compared its provisions with the several former bills, particularly in the sessions of 1845 and 1846, and also with those of the last three sessions. It will, we believe, be generally admitted that a summary remedy for correcting the abuses in small charities is highly desirable; but we can see no necessity for the establishment of a Board of Commissioners to manage and superintend all the charities in the kingdom, which are in number, according to some, 24,000, or, as others say, not less than 30,000, a large proportion of which are of very small annual amount.¹

By the bills of 1848, 1849, and 1850, no Board of Commissioners was proposed, but a summary jurisdiction to a limited amount was conferred on the Masters in Chancery and the County Courts. The present bill follows in some respects the bills of 1845 and 1846, empowering the Commissioners to inquire into the condition and management of all charities in England and Wales;—to compel the production of documents and accounts;—to examine witnesses;—to certify cases to the Attorney-General for the purpose of instituting suits; and requiring notice to be given to the Commissioners of all proceedings, and giving them power to suspend or prohibit proceedings.

The bills of 1848, 1849, and 1850, did

not extend to religious or charitable institutions wholly or in part maintained by voluntary contributions under the superintendence and control of any committee, directors, &c., chosen by the voluntary subscribers, and of whose income and expenditure accounts are annually rendered to the subscribers. In the present bill the limitation applies only to institutions wholly maintained by voluntary contributions.

Why this deviation from all the former measures has taken place does not appear. For all practical purposes there might as well be no exception whatever, because every charity has some part of its annual income derived from permanent investments, and not from annual or existing subscribers or donors. There are also numerous institutions largely supported by means derived from the munificence of benefactors long deceased, who have created rent-charges on their property or bequeathed interest in the public funds; but part of the income is derived from the active support of the present governors, directors, and subscribers. These institutions ought not to be subjected to the arbitrary power of a Board of Commissioners. It is sufficient that they remain amenable to our Courts of Justice—to the Court of Chancery where the income is of large amount, and to the Masters and the District Bankrupt Courts in smaller cases.

The remedy for abuse consists in its being obtained at a moderate expense, and these objects may be secured without the aid of a Board of Commissioners whose leave is to be asked before the law can be put in force. The inhabitants of the district in which the charity is situate cannot employ their own legal advisers without the consent of the Commissioners. The complaint being made, the Commissioners may direct the case to be prosecuted by the Attorney-General through the medium of the Government Solicitor. This is indeed a monopoly of the administration of justice, and may end in a practical denial of it.

We wish success to those parts of the bill which apply to the jurisdiction over smaller charities through the Masters in Chancery and the County Bankruptcy Courts, and trust that we shall be relieved of the objectionable interference of any Board of Commissioners.

We shall return to this subject in our next number, when we shall be prepared to consider the cases of the great charities in the city of London and elsewhere, which, as the bill stands, will be brought under their jurisdiction of the new board.

¹ It appears there are no less than 6,000 charities, whose annual income is less than one pound.

FRAUDULENT REMOVAL

OF

BANKRUPT'S PROPERTY.

THE attention of parliament should be called to the inefficient and often injurious provision of the Bankrupt Act in respect of debtors *not having resided six months in the district*, and also as to the power of the Commissioner to issue a warrant for a bankrupt's apprehension *prior* to the adjudication. The following case shows the injurious consequences of the present state of the law:—

A person took a business in a country town, and obtained credit for goods to furnish his house, and incurred other debts to a considerable amount. His stock was lately on fire, and he received a considerable sum from the insurance office. He removed in the night at different times a large quantity of goods to London, and sold what he called his damaged stock by auction away from his premises, and cleared out afterwards by private contract everything not so sold. On the 5th of June he departed by the night train, taking with him other property, and leaving an agent on the premises to collect his debts.

The solicitor of the creditors went to the district Bankruptcy Court to obtain an adjudication, but was met by the objection that the bankrupt had not resided there for six months. By that night's mail the solicitor sent his client to his London agents to obtain the Chief Commissioner's authority to proceed at the district Court. An appointment was then made with the Commissioner, but in the meantime a van arrived from London to remove all the goods which remained. Notices were served on the London carman and the agent or shopman, and the solicitor took upon himself to direct the police to stop the removal of the goods. The adjudication was then obtained, and the solicitor applied for a warrant to apprehend the bankrupt, who was going abroad with the money so obtained. The Commissioner, however, stated he had no power to grant the warrant!

Surely, it is quite time such a state of things should be remedied. It appears most absurd that a Commissioner in London may, in the name of the Chief Commissioner, give the requisite permission for a country adjudication, and yet a Commissioner in the country, though of equal rank, cannot act, and thus all the property which should be divided amongst the creditors may be swept away.

INCORPORATED LAW SOCIETY.

ANNUAL MEETING

THE Annual General Meeting of the Members of the Incorporated Law Society took place on the 19th instant, at their Hall, Chancery Lane: Mr. Richard Harrison, the President, in the Chair.

The President having stated the vacancies in the Council, Mr. J. S. Gregory was elected President, Mr. J. Coverdale, Vice-President, and the following gentlemen who went out of office in rotation, were re-elected:—Mr. B. Austen, Mr. B. R. Bayley, Mr. K. Barnes, Mr. W. H. Palmer, Mr. E. B. Richings, Mr. J. J. Pocock, Mr. J. J. I. Sudlow, and Mr. J. Young.

Mr. J. Leman was elected on the Council in lieu of the late Mr. Wing, and Mr. H. Lake in lieu of Mr. Metcalfe, resigned.

Mr. J. Bridges, Mr. Chisholms and Mr. C. Drue, were elected auditors.

The Report of the Council was read by the Secretary, received, and directed to be entered on the minutes and printed. The Auditor's Report was also read and approved. A resolution was passed expressing the regret of the members at the decease of Mr. Wing, to whose memory a just tribute of respect was paid. A vote of thanks was passed to Mr. Metcalfe for his valuable services to the Society and his able and long continued support of its objects.

Thanks were also presented to the President, Vice-President, and Council, for their great attention to the affairs of the Society and the interests of the profession.

We shall lay the Report, or such part of it as may be deemed necessary, before our readers at an early opportunity.

CERTIFICATE DUTY REPEAL

WE have to remind our readers that the motion for leave to bring in this bill stands first on the list for *Tuesday*, the 8th July. Numerous petitions have been received in London, in readiness to be presented, and accompanied by letters to the members, urging their attendance. The profession in Ireland and Scotland are also co-operating strenuously in support of this just and important claim to relief.

NOTICES OF NEW BOOKS.

A Supplement to Godson's Practical Treatise on the Law of Patents, and of Copyright in Literature, the Drama, Music, Engravings and Sculpture, and also in Ornamental and Useful Designs for the purposes of Sale and Exhibition.

By PETER BURKE, Esq., of the Inner Temple, Barrister-at-Law. London: Wm. Benning & Co. 1851. Pp. 236.

MR. BURKE'S Supplement to Mr. Godson's Treatise on Patents and Copyright includes the materials collected by Mr. Godson as Addenda to his second edition. The whole work is now brought down to the present time, and comprises all the recent enactments and decisions bearing on this important branch of law.

That part of the work which relates to Copyright is much enlarged since Mr. Godson's Treatise, and Mr. Burke has, in fact, treated of the whole law of the subject, including the several recent statutes which have effected very extensive and important alterations. Mr. Burke pays due and deserved homage to Mr. Justice Talfourd and Lord Brougham for their great services in the cause of literature both as legislators and writers.

The following are the Titles of the several Chapters on Patents:—

1. Introduction.
2. The inventor.
3. Of a new manufacture and the subject of a patent.
4. Of the specification.
5. Of the practice of obtaining patents.
6. The construction of letters patent.
7. The property in an invention.
8. The infringement of a patent.
9. Letters patent when void and the manner of cancelling them.
10. Foreign law respecting inventions.

The work also treats of proceedings by *scire facias*, and sets forth the Fees in the Petty Bag Office, the Regulations of the Attorney-General and the Rules and Fees at the Registration of Designs Office.

The Chapters on Copyright are,

1. Copyright in general.
2. Different kinds of literary property; original compositions; lectures; foreign copyright.
3. Particular works and periodical publications; abridgments.
4. Musical and dramatic compositions; theatres.
5. Engravings; ornamental designs; useful designs; designs for exhibition; sculpture.
6. Persons and corporations interested in the publication of books.
7. Remedies for infringement of copyright.

The Appendix contains the following acts:—

- Dramatic works: 3 & 4 Wm. 4, c. 15; 6 & 7 Vict. c. 68.
 Copyright: 5 & 6 Wm. 4, c. 45; 7 & 8 Vict. c. 12; 10 & 11 Vict. c. 95.
 Designs: 5 & 6 Vict. c. 100; 6 & 7 Vict. c. 65; 13 & 14 Vict. c. 104.

The author and inventor, as well as the lawyer, are thus presented with a concise and accurate statement of the present law in regard both to copyright and patents.

THE UNITED LAW CLERKS' ANNI-VERSARY.

THE 19th Anniversary Meeting of this useful and prosperous Society took place on the 25th instant, in the splendid New Hall of Lincoln's Inn,—the use of which, by the great kindness of the Benchers, was granted on this occasion. The Council Rooms of the Benchers were also appropriated to the judges, barristers, and solicitors who attended the meeting.

The Benchers of this and other Inns of Court and Chancery have been frequent and liberal donors to the Society, and this last striking sanction of its meritorious objects, and approval of its good management, cannot fail to be of the greatest service to the Society in its future progress. Not only new Patrons may be expected from all branches of the profession, but (what is equally important) many new Members of the Society will be induced to join it:—convinced, as they must be, of its permanent and extensive utility both to the pecuniary interests and the reputation of the great body of Law Clerks.

Vice-Chancellor Knight Bruce presided. On his right sat Vice-Chancellor Lord Cranworth and Vice-Chancellor Turner, and on his left the Master of the Rolls and the Solicitor-General. Nothing could surpass the judgment, good feeling, or eloquence of the speeches to the meeting of these distinguished personages. The cause of the Society and the interests of the Law Clerks were never more fully or ably advocated than on this occasion. The integrity, the intelligence, the untiring diligence of the clerks of the Profession, were noticed with deserved applause, and their essential services, as well in the offices to which they were attached, as to the Bar with whom they communicate, were dwelt upon by the Chairman in terms which must have been peculiarly gratifying to their feelings, and must

tend to elevate their character in public estimation.

Mr. Freshfield, Mr. Rogers, Mr. Maynard, Mr. Phillimore, Mr. Bigg, and Mr. Baggalley, also addressed the meeting with much effect. We have at present been able only to state our general impression of the good effect of this large Congress of every branch of the Profession, assembled for a wise and benevolent object common to all; and shall take an early opportunity of resuming the subject, and giving the substance of the speeches and the annual report.

COMMON LAW REFORM.

WE must do the law reformers the justice of acknowledging, that amidst all their clamour for the most extensive alterations or amendments of the law, they willingly admit that there must be a sufficient class of skilful lawyers to assist in the due administration of justice. It is not expected by the most sanguine advocates for simplifying the law, that it can be rendered so easy to interpret, and so readily carried into effect, that "every man may be his own lawyer." As in all the varied business of life, in every useful and ornamental art, the division of labour contributes to the general advantage, so it must be in the pursuit of justice. That knowledge which a man can procure for a moderate fee, he might consume days and nights in acquiring, and perhaps fail at last in accomplishing his object.

If there must be lawyers, they should, of course, possess unimpeachable integrity and a thorough knowledge of their profession. To insure the continuance of these qualifications, it is manifest that there should be a liberal amount of remuneration. It cannot be expected that the law will be studied or practised for the abstract love of justice. There must be the incentives both of honour and emolument. Even if the emoluments were adequate, but the profession held in low esteem, the highest order of practitioners would cease to belong to it, and the public would necessarily suffer by the introduction of a lower class of men, ill educated and unscrupulous.

Whilst, therefore, it may be right to abolish useless forms and diminish the expense and hasten the conclusion of legal proceedings, the services really rendered by the skilful practitioner should be duly compensated. We willingly give publicity to the suggestions of our correspondents for the improvement of the mode of procedure, but trust it will not be overlooked that no

good can result to the public in any projected change, unless the remuneration of the attorney be adequately secured. With an improved mode of procedure there should also be introduced an improved mode of remuneration.

We submit the letter of a correspondent, whose suggestions are entitled to an attentive perusal:—

DELAYS IN THE TRIAL OF ACTIONS.

To the Editor of the *Legal Observer*.

SIR,—Your correspondent G. H. B. is certainly right in finding fault with the practice as to jury process, and if it were only the simple question of costs, it would be deserving of consideration, although I think beyond doubt the venire must be issued. But I think the *distringas* being tested on a day subsequent to the return of the venire is conclusive of the necessity for issuing and getting the venire returned. The issue awards the venire, and it is generally believed it may be awarded returnable "forthwith;" by the case of *Williams v. Calverley*, 14 L. O. 13, however, it seems more proper that a particular day should be named in the award. The record requires that, because the jurors have made default, "therefore let the sheriff have the bodies of the said jurors accordingly." The necessity for the *distringas* or *habeas corpus* is here manifest. The venire is of no practical utility, I admit, but can a *distringas* be issued in the absence of the venire?

This is, however, of trifling importance compared with the evils of using such an eccentric practice as that of requiring two writs to summon a jury in every cause. The return of the *distringas* is the cause of great delay and injustice: thus, the judgment must not be signed until four days after the return day. In Term time, the attorney can regulate, by careful maneuvering, the extent of the delay of judgment, because, as the Sitting is one day only in law, the *distringas* is made returnable the day after the Sitting day, and judgment may be signed four days after that. But in causes tried in Vacation, (that is to say, in all important causes,) the judgment is delayed until after the return of the *distringas*, or four days after the first day of the next Term;—then, if the suitor against whom the verdict was decreed raises his voice and with it a point of law, the extremely fortunate suitor may probably have the advantage of seeing his name in the list of New Trials, and, after waiting a whole year, perhaps two, he may be allowed to try the cause he has once won over again.

The cause is again set down for trial in the Marshal's list, and, after going through the ridiculous absurdity of being made a remanet to the first Sitting in Term and a remanet to the Sitting after Term three or four times, ultimately comes on again for trial, and after wasting the prescribed time again for judgment, the plaintiff rushes frantically to the Clerk of the Court

cutions to see that his attorney issues the execution; but alas! the fortunate plaintiff has not yet this privilege,—a writ of error is allowed, his execution is stayed, and he must wait patiently for the judgment of a Court of Error.

After waiting with anxious hope for some months, the plaintiff finds the Court of Error are ready to hear the points for argument,—the cause is heard once more, and the judges take time to consider (*Cur. ad. vult.*). In about three or four months, the judgment is pronounced in favour of the fortunate plaintiff; but not long is he to be rendered happy in his belief that he will at last get his rights. No,—the defendant brings a writ of error to the Exchequer Chamber, and the plaintiff must again wait months before he can get a judgment in his favour, and then, oh! luxury, almost exhausted with delight, the plaintiff hears the Exchequer Chamber give judgment in his favour, and determines to make the defendant feel the consequences of his conduct by a fearful *ca. sa.*; but there is another tribunal yet,—the defendant brings a writ of error in the House of Lords, and after they have heard the case, and after they have taken time to consider, the plaintiff issues his *ca. sa.* (if the parties are both alive) and takes the obstinate defendant to gaol.

This might be considered a monstrous case, but should the laws permit of such cases?

A case came under my observation, where an action was tried in the Long Vacation—(there was no pretext for moving for a new trial)—judgment was not signed until November because of the distingas—(it was not a case for speedy execution)—but the defendant thought proper to make away with his property, and when taken on a *ca. sa.* he was fully prepared to take the benefit of the act. True, he was opposed, (of course at the plaintiff's expense,) and was remanded for 18 months for making away with his property, the end of which was, that the plaintiff was glad to accept about one-fourth of his right, and let the dishonest defendant escape out of that gaol where he had with great difficulty been so justly placed.

It is generally believed that jury process is to be abolished, but an exposure of its defects can injure no one, while quietness on such subject would make many persons parties to its faults, who are by no means desirous of shielding its absurdities.

The manner of arranging and trying causes is in many respects objectionable.

An action for a tort under the present system, as it may be fairly considered a long cause, can only be tried in Vacation. Surely, one would think it were invented to enable the unjust suitor to find time to raise quibbles. Imagine a cause, say, a troublesome ejection, (where it is of importance to get rid of the tenant,) set down in June for the Sitting after Term,—you may rely upon its being a remanet after Michaelmas Term,—then probably a remanet to Hilary, from Hilary to Easter, and possibly from Easter to after Trinity, so that

you may get judgment in the following Nov., with the privilege of executing a writ of *habere facias*, &c., and be empowered to commence your action for mesne profits, including the costs of the action by which you have recovered the possession of your own house from the hands of a fraudulent and unjust tenant.

Why are not causes tried as they are set down? (the practice of undefended causes might still be adopted.)

Would it not be more reasonable to allow four days only independent of Term, to object to a verdict or move for a new trial? If the Courts were not sitting, at least affidavits might be filed and a rule nisi granted, such rules nisi to be argued on the first day of the following Term.

Is it difficult to understand the causes of delay, when we know that such is the state of the practical part of the law?

Let jury process be reformed, and let causes be tried in the order in which they are set down, and abolish all useless appeals, and such a rapid stride will have been made towards Common Law reform that the country would no longer sigh for such justice as they get in County Courts.

T. H. S.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE Committee of Management held their usual monthly meeting on Wednesday, the 11th inst. Mr. C. J. Palmer in the chair.

A case of alleged malpractice on the part of a member was further considered, and adjourned.

A case of alleged malpractice communicated by a member was considered; but it did not appear to be one in which the Committee could effectively interfere.

Mr. S. B. Jackaman, of Ipswich, and Mr. J. Sparke, of Bury St. Edmunds, the Hon. Sec. of the Eastern and Western divisions of the Suffolk Law Society, were nominated as members of the Managing Committee.

Correspondence was read on the subject of the Registration of Assurances Bill, forwarding copy of petitions presented against the bill by the attorneys and solicitors of Bury St. Edmunds, and by those of Worcester; also, resolutions passed at a meeting of the attorneys and solicitors of Lincolnshire.

Letters were read from Members, expressing satisfaction at the last Annual Report.

It was reported from the Equity Committee, that a bill had been prepared under their superintendence, to effect further reductions in, and improve the regulations of the Chancery fees, and that it had been placed in the hands of the Master of the Rolls.

It was reported from the Common Law Committee, that Mr. Mullings had consented to move for a return of all the Court fees taken during the year 1850, in the Courts of Law and Equity at Westminster; showing the detail of their collection and expenditure; in order to

show the changes which have taken place since the return for the year 1846, which is contained in the Appendix to the Report of the Select Committee (1849) on fees in the Courts of Law and Equity.

The secretary was instructed to take the necessary steps to remove the business of the Association to their new offices, at No. 8, Bedford Row.

It was resolved, in order to give the members of the Association, and the profession generally, greater knowledge of the operations of the Association, to communicate to the *Legal Observer* and the *Law Times* an abstract of the proceedings of the Committee, to be settled by the Chairman of each meeting.

(Signed) **WILLIAM SHAEN,**
Secretary.

10, Lincoln's Inn Fields.

LIVES OF THE JUDGES OF ENGLAND.

We welcome the publication of the Third and Fourth Volumes of Mr. Foss's important work, "The Judges of England, with Sketches of their Lives." The Third Volume comprises the Judges during the reigns of Edward I., II., and III. The Fourth Volume includes those of the reigns of Richard II.; Henry IV., V., and VI.; Edward IV. and V., and Richard III. The plan of the former volumes has been ably continued: a valuable legal survey is given of each reign, with interesting notices connected with the Courts at Westminster, the Inns of Court and Chancery, the state of legal learning, and the general progress of our jurisprudence. We shall take an early occasion to offer a general review of Mr. Foss's labours, and submit to our readers some extracts therefrom.

CIRCUITS OF THE JUDGES.

Patteson, J., will remain in Town.

WESTERN.

Lord Campbell, L. C. J., and Coleridge, J.

Monday, July 14, Devizes.

Thursday, July 17, Winchester.

Wednesday, July 23, Dorchester.

Saturday, July 26, Exeter and City.

Saturday, August 2, Bodmin.

Tuesday, August 7, Bridgwater.

Wednesday, August 13, Bristol.

HOME.

Jervis, L. C. J., and Alderson, B.

Wednesday, July 16, Hertford.

Monday, July 21, Chelmsford.

Monday, July 28, Maidstone.

Monday, August 4, Lewes.

Thursday, August 7, Croydon.

ROBSON, J. P. P.

Pollock, L. C. B., and Gresswell, J.

Saturday, July 12, Aylesbury.

Tuesday, July 15, Bedford.

Thursday, July 17, Huntingdon.

Saturday, July 19, Cambridgeshire.

Thursday, July 24, Norwich and City.

Wednesday, July 31, Ipswich.

MIDLAND.

Parke, B., and Maule, J.

Wednesday, July 16, Oakham and Northampton.

Saturday, July 19, Lincoln and City.

Wednesday, July 23, Nottingham and Town.

Friday, July 25, Derby.

Tuesday, July 29, Leicester and Borough.

Friday, August 1, Coventry.

Saturday, August 2, Warwick.

NORTH WALES.

Wrightman, J.

Monday, July 21, Newtown.

Thursday, July 24, Dolgelly.

Saturday, July 28, Carnarvon.

Wednesday, July 30, Beaumaris.

Saturday, August 2, Ruthin.

Wednesday, August 6, Merthyr Tydfil.

Saturday, August 9, Chester and City.

SOUTH WALES.

Thompson, J. P.

Saturday, July 12, Cardiff.

Saturday, July 19, Carmarthen.

Friday, July 25, Haverfordwest and Town.

Wednesday, July 30, Cardigan.

Saturday, August 2, Brecon.

Thursday, August 7, Presteign.

Saturday, August 9, Chester and City.

OXFORD.

Erle, J., and Martin, B.

Monday, July 14, Abingdon.

Wednesday, July 16, Oxford.

Saturday, July 19, Worcester and City.

Thursday, July 24, Stafford.

Thursday, July 31, Shrewsbury.

Saturday, August 2, Hereford.

Wednesday, August 6, Mowmouth.

Saturday, August 9, Gloucester and City.

NORTHERN.

Platt, B., and Williams, J.

Saturday, July 12, York and City.

Saturday, July 26, Durham.

Thursday, July 31, Newcastle and Town.

Monday, August 4, Carlisle.

Thursday, August 7, Appleby.

Saturday, August 9, Lancaster.

Wednesday, August 13, Liverpool.

PERPETUAL COMMISSIONER.

Appointed under the Fines and Recoveries Act, with date when gazetted.

Sale, William, Manchester, in and for the County of Lancaster. May 21, 1851.

MASTERS EXTRAORDINARY IN CHANCERY.

From May 27th, to June 20th, 1851, both inclusive, with dates when gazetted.

Blenkinsop, James, Liverpool. May 27.
 Brownie, John Rogers, Nottingham. May 27.
 Clitherow, Robert, Horncastle. June 17.
 Colquhoun, George, Woolwich. June 13.
 Dryland, Robert, Goster. Speenhamland. June 20.
 Ransom, Arthur, Sudbury. June 13.
 Southam, Thomas, Manchester. June 13.
 Udall, Thomas, Newcastle-under-Lyme. June 10.

DISSOLUTION OF PROFESSIONAL PARTNERSHIP.

From May 25th, to June 20th, 1851, both inclusive, with date when gazetted.

Wathen, John Beardmore, and Arthur Lort Phillips, 18A, Basinghall-street, City, Attorneys and Solicitors. June 10.

NOTES OF THE WEEK.

LAW APPOINTMENTS.

The Queen has been pleased to grant the place of one of the Lords of Session in Scotland to John Cowan, Esq., her Majesty's Solicitor-General for Scotland, in the room of Thomas Maitland, Esq., deceased.

The Queen has also been pleased to nominate and appoint the said John Cowan to be one of the Lords of Justiciary in Scotland, in the room of the said Thomas Maitland deceased.—From the *London Gazette* of June 24.

Henry Sedgwick Wilde, Esq., Barrister-at-Law, has been appointed one of the Registrars to the District Court of Bankruptcy at Leeds, in the room of Mr. Charles Waterfield, resigned.

John Smith Mansfield, Esq., Barrister-at-Law, has been appointed a Justice of the Police Court at Liverpool, in the room of Mr. Rush-ton, deceased.

William Carman, Esq., has been appointed Clerk of the Pleas for the Supreme Court of New Brunswick.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

London and North Western Railway Company v. Bradley. June 17, 1351.

LANDS CLAUSES CONSOLIDATION ACT.—COMPENSATION FOR CONSEQUENTIAL DAMAGE.—INJUNCTION TO RESTRAIN PROCEEDINGS.

Upon appeal from V. C. Lord Cronworth, an injunction was dissolved to restrain the defendant from proceeding under the 8 Vict. c. 18, s. 68, to obtain compensation for consequential injury to him in his business as the keeper of a public-house near a tunnel on the line of railway, by reason of the vibration of the trains causing his beer to turn sour and otherwise affecting his business, although neither the railway nor the tunnel passed over or under any part of his premises.

THIS was an appeal from an order of Vice-Chancellor Lord Cronworth, granting, on Jan. 16 last, an injunction to restrain the defendant from proceeding under the notice which he had served on the plaintiffs to have the amount of compensation under the 8 Vict. c. 18, s. 68, assessed by a jury. It appeared that the defendant was the owner of a public-house at Huddersfield; and that the plaintiff's railway passed along and through a tunnel near his premises, and that the alleged injuries resulted from the vibration caused by their trains to his beer, and otherwise to his business. The amount of damage had been ascertained by an arbitration at 1,250*l.*, which the plaintiffs refusing to pay, the defendant proceeded under the 8 Vict. c. 18, s. 68.

Malins and Daniel, in support, cited *East and West India Docks and Birmingham Junction Railway Company v. Gattke*, 3 M.N. & G. 155; 42 Leg. Obs. 356; overruling *London and North Western Railway Company v. Smith*, 1 Hall & Twells, 364; 1 M.N. & G. 216.

Rolt and Elmley, contra.
 The Lord Chancellor said, that the present case was governed by *Gattke's* case, to the decision in which he had given much consideration, and discharged the injunction accordingly.

June 24.—*Clifford v. Turrell*—Motion by plaintiff dismissed, with costs, for rehearing with a view to set aside compromise of his interest in the suit.

Master of the Rolls.

Bell v. Jones. June 3, 1851.

BILL FOR SPECIFIC PERFORMANCE OF AGREEMENT TO CARRY ON BUSINESS IN PARTNERSHIP.—LACHES IN FILING.

Where a bill was filed in Feb. 1849, for the specific performance of an agreement, whereby the business of a brewer was to be carried on by the defendant in partnership with the plaintiff, and she was excluded in Jan. 1848 and the defendant had since disposed of the business; it was dismissed, but without costs.

THIS bill was filed in Feb. 1849, to compel the specific performance of an agreement, whereby it was agreed that on the plaintiff, who

was a new vendor, in Birch Lane, and who had become bankrupt in 1847, obtaining her certificate, the business should be carried on by the defendant in partnership with herself. It appeared she obtained her certificate in Sept. 1847, and was excluded from the business in Jan. 1848, and that the business had since been disposed of by the defendant.

R. Palmer and Bates for the plaintiff; *Walpole and Reilly* for the defendant.

The Master of the Rolls said, that as there had been great delay in filing the bill and a decree for specific performance would be useless, the bill must be dismissed, but without costs.

June 24.—*Trye v. Corporation of London*—Judgment on construction of will, costs out of the estate.

— 24.—*Greenwood v. Churchill*—Judgment as to costs.

— 24.—*Reece v. Green and another*—Bill dismissed with costs as against defendant Green, and as to another defendant, Spiers, without costs.

— 24.—*In re Barlow's Trusts*—Reference to the Master.

— 24.—*Attorney-General v. Free Grammar School of Louth*—Order by consent for appointment of master subject to determination of the Court, as to his future salary and the intended improvement in the management of the charity.

Vice-Chancellor Knight Bruce.

Lock v. De Burgh; Lord Burghersh v. De Burgh. June 4, 1851.

APPORTIONMENT ACT.—EFFECT OF, WHERE LEASE GRANTED AFTER PASSING OF ACT.

Held, that the rent reserved upon a lease granted after the 4 & 5 Wm. 4, c. 22, (the Apportionment Act) came into operation, is apportionable between the personal representatives of the tenant for life and the remainder-man, notwithstanding the power of leasing was created before that act passed.

In this case, a question arose whether the personal representatives of the tenant for life were entitled to a proportion of the rents which had been reserved upon a lease granted under a power of leasing created before, but not exercised until after, the passing of the 4 & 5 Wm. 4, c. 22, for the apportionment of rents and annuities, and which had accrued between the last day of payment and the day of the death of the tenant for life.

Calvert and Brett, for the plaintiff, referred to *Knight v. Boughton*, 12 Beav. 312; *Willcock and Keene*, for other parties.

The Vice-Chancellor held, that the representatives of the tenant for life were entitled to the proportion of the rents down to day of his death, and said that a reference would be directed unless the amount could be settled by arrangement between the parties.

Vice-Chancellor Lord Cranworth.

In re Halifax Gas Company, ex parte Vicar of Halifax. June 3, 1851.

RE-INVESTMENT OF RESIDUE OF PURCHASE MONEY PAID INTO COURT FOR PURCHASE OF VICARAGE LANDS.

An order was made on petition for a reference to the Master to approve of a purchase by the vicar of H., with the residue of the moneys paid into Court for certain of the vicarage lands taken by the H. Gas Company, under the powers of their act, notwithstanding the company had borne the costs of two former investments, and the title was not disputed.

THIS was a petition on behalf of the vicar of Halifax for a reference to approve of a purchase with the remainder of a sum of 1,381l. which had been paid into Court, for certain of the lands belonging to the vicarage which had been taken by the Halifax Gas Company, under the powers of their act. It appeared that two former purchases had been made, the costs of which the company had paid.

W. M. James, in support.

Bethell and Daniel, contra, on the ground that the Governors of Queen Anne's Bounty and the Bishop, were satisfied of the propriety of the purchase, and that the company had already borne the expenses of two other purchases, and contended, that as the title was not disputed, the order should be made without a reference.

The Vice-Chancellor, however, said, that the usual order must be made for a reference.

June 24.—*Heath v. Chapman*—Motion for commission to examine witnesses in Italy: stand over.

— 24.—*In re Great North of England and Yorkshire and Glasgow Union Junction Railway Company, ex parte England*—Motion granted for removal of name from list of contributories.

Queen's Bench.

Gower v. Beaumont. May 30, 1851.

MASTER AND APPRENTICE.—ASSIGNMENT OF BUSINESS WITHOUT PROVIDING FOR INSTRUCTION OF APPRENTICE.—EVIDENCE OF BREACH OF CONTRACT.

Held, on motion for and refusing, a rule nisi to set aside a verdict for the plaintiff and for a new trial, on the ground of misdirection, that the fact of the defendant, a shipwright, selling his business without assigning his apprentice to his successor, is evidence of a breach of an indenture of apprenticeship, under which the defendant agreed to instruct the plaintiff's son in his business, and to pay him 12s. per week, although the assignee continued to employ him and to pay him such weekly sum, and that the plaintiff was entitled to damages in an action on the indenture for such breach.

THIS was a motion to set aside the verdict for the plaintiff, and for a new trial in this act

tion, which was brought on a deed of apprenticeship, dated in Oct. 1850, under which the defendant, a shipwright at Southampton, undertook to instruct the plaintiff's son in his business, and to pay him 12s. per week. It appeared that the defendant sold his business in Jan. last, without assigning his apprentice to his successor, with whom, however, he remained and received the sum of 12s. per week. On the trial before Lord Campbell, C. J., his lordship directed the jury that there was evidence of a breach of contract, upon the defendant's disposing of the business without assigning the apprentice, and the plaintiff accordingly obtained a verdict, with 99l. damages, whereupon this motion was made.

Humphrey, Q. C., in support.

The Court held, that there was no misdirection, and refused the rule.

Booth v. Monmouthshire Railway and Canal Company. June 3, 1851.

PUBLIC COMPANY. — ACTION FOR BREACH OF DUTY IN NOT COMPLYING WITH REQUIREMENTS OF THEIR ACT. — DEMURRE.

Under their act of parliament, a company were empowered and required to convert a certain tram-road, which passed near the plaintiff's iron works, and communicated with the canal, into a railroad for locomotive traffic, and to make a line of railway. The company having suffered the time limited by the act to expire without executing the works, and the plaintiff being injured by their neglect to carry out the works, held, on demurder to a declaration in an action brought to recover compensation for the breach, that he was entitled to recover.

This was an action brought against the defendants to recover compensation for their breach of duty in not converting a certain tram-road, which passed near the iron works of the plaintiff, and communicated with the canal, into a railroad for locomotive traffic, and for not making the line of railway, which they were empowered and required to construct under their act. It was alleged that the plaintiff could not convey his iron to the canal as conveniently or cheaply as if the works in question had been constructed, and it appeared the time limited by the defendants' act for executing them had expired.

Wilkes now appeared in support of a demurder to the declaration and contended the breach of duty of the company was not the subject of a civil action, citing *Wilkes v. Hungerford Market Company*, 2 Bing. N. C. 281.

Attorney-General v. Plipson, contra, in support of the declaration.

The Court said, that where a duty was imposed which related to the public at large by a statute, and the duty was neglected, any individual to whom damage thereby resulted, was entitled to compensation, and as it appeared the plaintiff was injured by the defendants' neglect, he was entitled to judgment.

June 19.—*Bridges v. Hawksworth*—Cur. ad. vult.

— 19.—*Jonas v. Adams*—Appeal allowed from County Court, and new trial.

Court of Common Pleas.

Dews v. Riley. May 28, June 17, 1851

COUNTY COURT. — WARRANT FOR COMMITMENT.—LIABILITY OF CLERK FOR TRESPASS UPON DISCHARGE ON HABEAS CORPUS.

D. was committed to prison under a warrant of commitment issued by the clerk of a County Court in pursuance of a minute made by the judge for payment of the debt for which he had been sued "forthwith, or for 30 days' imprisonment," and it appeared the minute had been made upon D.'s default in not paying under a former order for payment of the debt and costs by certain instalments, or to be imprisoned "for 10 days." This Court having discharged D. on habeas corpus on the ground the warrant was bad as being in the alternative, D. brought his action in trespass against the clerk for issuing the warrant under which he had remained in prison 19 days, to which the defendant pleaded "not guilty by statute," and put in evidence the minute as justification: Held, that the defendant acted in his ministerial capacity to carry into effect the orders of the judge, and was not liable to the action.

A rule nisi had been granted on April 30 last, pursuant to leave reserved, to set aside the verdict for the plaintiff, and enter a nonsuit, or to enter the verdict for the defendant in this action, which was in trespass against the clerk of the Whitechapel County Court for issuing a warrant of commitment against the plaintiff, to which the defendant pleaded "not guilty by statute." It appeared that Mr. Serjeant Manning, the Judge of the County Court, had made an order for payment by the plaintiff, who was sued for a debt, of a sum of 4l. 11s. and the costs, in certain instalments, or to be imprisoned for 10 days, and that the plaintiff not having paid on the day named, the clerk of the Court (the present defendant) issued a warrant for his committal in accordance with a minute of the order of the judge for payment "forthwith, or 30 days' imprisonment," under which he was arrested on November 5 last, and detained in Whitecross-street Prison to the 23rd November, when he was discharged on *habeas corpus* by this Court upon the ground that the order being in the alternative was bad, and he thereupon brought the present action. At the trial before Maule, J., at the Middlesexittings on April 28, a verdict was taken by consent with 40l. damages, subject to this rule.

Humphrey, Q. C., and *Skinner*, now showed cause, on the ground that the defendant could not give in evidence under his plea of

not guilty by statute," the warrant of the Court as a justification, and that by signing the irregular warrant he had committed the trespass.

Watson, Q. C., and *Ministry*, in support, on the ground the defendant was merely a ministerial officer, and was not liable in trespass for obeying the order of the Judge of the Court.

Cur. ad. vult.

The Court said, that as the clerk was merely the officer to carry into effect the orders of the Judge of the Court, and the warrant issued was no more than the defendant was authorized to do, and was the act and received the seal of the Court, he was not liable; and the rule to enter a nonsuit was therefore made absolute.

June 21.—*Furnell v. Crawley and others*—Appeal from County Court allowed and judgment for defendants.

Court of Exchequer.

Hudson v. Roberts. May 31; June 4, 1861.

ACTION TO RECOVER DAMAGES FOR INJURIES CAUSED BY FEROCIOUS BULL.—SCIENTER, EVIDENCE 25-24, 30, 32.

On the trial of an action to recover compensation for injuries sustained by the plaintiff from the attack of a bull belonging to the defendant, it appeared that the defendant, upon seeing a bundle tied up in a red handkerchief in the plaintiff's room after the accident, said that it had caused the mischief, as the bull would always run at anything red; Held, that such expression was evidence for the jury of the scienter, and the damages being moderate and the presiding judge not dissatisfied with the verdict for the plaintiff, a rule nisi was refused to set it aside and enter a nonsuit.

This was a rule nisi granted on April 16 last, to set aside the verdict for the plaintiff in this case and enter a nonsuit. The action was brought to recover compensation for injuries sustained by the plaintiff from the attack of a bull belonging to the defendant, a cow-keeper; and it was alleged in the declaration that defendant had full knowledge that the bull was of a ferocious disposition and accustomed to attack and gore mankind. On the trial before *Pollock, L. C. J.*, at the sittings after Hilary Term last, it appeared that the bull had on former occasions run at a woman and her daughter who wore red ribbons, and had also attacked a postman having a red collar, and that the plaintiff carried a bundle tied up in a red handkerchief when the bull attacked him. It further appeared that the defendant upon calling to see the plaintiff after the accident, had said, on seeing the bundle, that it was the cause of the mischief, as the bull would always run at anything red. The jury having found for the plaintiff with 5*l.* damages, this rule had been obtained.

Hugh Hill and *Hawkins* showed cause on the ground that, as by the defendant's admis-

sion, he knew that the bull would run at persons wearing anything red, it was his duty to take proper precautions in driving him through the public roads, and that, although he was not shown to be aware of the previous attacks, his admission was evidence for the jury of the scienter.

E. James in support of the rule, on the ground it was necessary to show that the defendant had notice of the former attacks, and that the defendant's statement was not any admission, but only a statement of the popular belief that all bulls would run at red clothes.

Cur. ad. vult.

The Court said, that the expressions of the defendant, which indicated a knowledge on his part that the bull would run at any person clothed in red or having anything red about him, although he was not shown to have had any personal knowledge of the former misconduct of the bull, were properly submitted as evidence of the scienter to the jury, whose province it was to decide as to the degree of weight to be given thereto. And as the amount of damages awarded was temperate, and the learned baron was not dissatisfied with it, the rule must therefore be discharged.

June 23.—*Fernandez and others v. Parkin and others*—Rule discharged for new trial.

—24.—*Yeaton v. Eastwood*—Rule absolute to enter a nonsuit, unless arrangement come to.

Court of Exchequer Chamber.

Doe dem. Padwick v. Whitcombe. May 19, 1861.

ACTION OF EJECTMENT.—ENTRY IN BOOK BY STEWARD.—EVIDENCE OF REPUTATION OF EXTENT OF MANOR.

Held, overruling a bill of exceptions to the ruling of *Lord Denman, C. J.*, in an action of ejectment to recover possession of certain property alleged to form parcel of the manor of H., which had been purchased by the lessor of the plaintiff of N., that a book, found in the muniment room of N., in which there was an entry alleged to purport to be an abstract of a lease in which the property in question was included, and to be in the hand-writing of the then steward, was not secondary evidence of the lease for the purpose of showing the extent of the manor of H., in the absence of proof that the entry was made by the steward, or that it was his duty to make the same.

This was a bill of exceptions tendered to the ruling of *Lord Denman, C. J.*, in an action of ejectment to recover possession of certain property at *Portsea*, refusing to admit as secondary evidence of a lease, for the purpose of showing the extent of the manor of *Heyling*, in *Hampshire*, a book found in the muniment room of the *Duke of Norfolk*, from whom it was alleged the land sought to be recovered was purchased by the lessor of the plaintiff, and in which there was an entry, dated in 1610,

which was alleged to be the abstract of a lease in which the property in question was included, and to be in the hand-writing of the then steward.

Crowder, in support.

The Court (without calling on *Butt* and *Poslden* for the defendant) said, that as there was no evidence of the entry being made by the steward, or that it was his duty to make such entry, it could not be admitted as secondary evidence of the lease, and was not therefore evidence of reputation as to the extent of the manor, and the defendant was accordingly entitled to judgment.

Ambergate Railway Company v. Norcliffe.
May 19, 1851.

RAILWAY COMPANY.—ACTION FOR CALLS.—
CALL PAYABLE BY INSTALMENTS VALID.

Held, that an action is maintainable for a call directed to be paid by instalments, or for such portion thereof as may be due.

This was an action of debt to recover certain railway calls which had been made payable by instalments, and on the trial the learned

judge having decided that such a call was not good, these exceptions were tendered.

Whitehurst in support; *Willmer*, contra.

The Court said, that the action would lie for the recovery of such portion of the call as was due, and directed a *venire de novo*.

June 18.—*South Eastern Railway Company v. Reginam*—Appeal allowed from the Court of Queen's Bench.

— 18.—*King and another v. Rochdale Canal Company*—Judgment affirmed of the Court of Queen's Bench.

— 19.—*Henderson v. Eason*—*Cur. ad. vult.*

— 20.—*Regina v. Hogan*—Judgment arrested.

— 20.—*Rashleigh v. South Eastern Railway Company*—Stand over.

— 18, 20.—*Lavey v. Reginam*—Judgment affirmed.

— 21.—*Ellis v. Reginam*—Judgment of the Court of Exchequer affirmed.

— 21.—*Owen v. Breeze*—Judgment of Court of Exchequer reversed, and judgment for defendant.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF COSTS.

[For the previous Sections of the Digest of this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lunacy, p. 147.]

ADMINISTRATION SUIT.

Costs, where two estates, those of the testator and the executor, are administered in the same suit. *Culeha v. Cheese*, 7 Ware, 246.

AMENDMENT.

See *Demurrer*.

APPEAL.

1. The Court, on an appeal, looks at what the appellant seeks to correct, and not at the reasons given in the Court below, for its decision, and disposes of the costs of the appeal accordingly. *Cradock v. Piper*, 1 H. & T. 617.

2. *Varying decree*.—The rule which forbids an appeal on the question of costs alone does not preclude the Court, where the appeal embraces other matters also, from varying the decree as to costs, though it affirm it as to such other matters; but such variation will not protect the appellant from the costs of the appeal. *Lewis v. Smith*, 1 M. & G. 417.

3. The rule of the Court as to the costs of an appeal is, that when the case has been once decided and the decision is quaverled with,

but found correct on appeal, the dissatisfied party must pay the costs of the appeal. *Lassence v. Tierney*, 2 H. & T. 115.

4. *Variation on immaterial points*.—Where a decree which is appealed from is affirmed on the chief points, but varied in immaterial particulars only, the appellants will not be exempted from paying the costs of the appeal. *Purchase v. Shallis*, 2 H. & T. 354.

5. *Where party appears in person in Court below*.—On appeal by the defendant to the Lord Chancellor, his lordship ordered the plaintiff's motion for a receiver and manager before the Master of the Rolls to be dismissed, but refused the costs of that motion, on the ground that the defendant, who had appeared in person, had in so doing prevented the Court below from having all the assistance which was necessary for a right decision of the case, and had thus led to the plaintiff's obtaining the order appealed from, and which his lordship discharged. *Holl v. Hall*, 3 M. & G. 79.

APPEARANCE.

Solicitor.—A solicitor was concerned in a cause for two parties, and a petition was served on him which affected one only, but without any intimation in respect of which of these parties he was served. He appeared on the hearing for both: Held, that the party having no interest in the matter was entitled to his costs. *Kilminster v. Noel*, 12 Beav. 246.

ATTACHMENT.

1. *Dismissed bill*.—Where a plaintiff's bill is dismissed with costs, a writ of attachment is

the right mode of recovering such costs. *Andrews v. Walton*, 1 M'N. & G. 380.

2. For nonpayment.—An order was made on the application of the plaintiff that certain costs should be taxed and paid without stating to whom. The subpoena for costs directed them to be paid to the plaintiff and an attachment issued in the usual form: *Held*, regular. *Oldfield v. Cobbett*, 12 Beav. 91.

3. Bringing up party in custody for nonpayment.—It is not necessary to bring up a party who is in custody for nonpayment of costs. *Oldfield v. Cobbett*, 12 Beav. 91.

See *Contempt*.

ATTORNEY-GENERAL'S COSTS.

1. The principle of the rule, that the Attorney-General never receives or pays costs, will for the future be modified thus,—viz., that the Attorney-General is not to receive costs in a contest in which he could have been called upon to pay costs, had he been a private individual; but the rule is not to be without exception. *Attorney-General v. Corporation of London*, 2 H. & T. 2.

Where, however, if a private individual he could not have been called on to pay costs, the rule does not apply.

Thus, in a case where the Attorney-General had excepted to the defendant's answer for insufficiency, and the exceptions had been allowed by the Master: *Held*, on affirming this decision, by the Master of the Rolls, and subsequently on appeal by the Lord Chancellor, that the Attorney-General was entitled to costs, the rule being that a party who merely supports the decision of a competent jurisdiction is never called on to pay the costs of so doing.

The decision of the House of Lords on the question of costs in the case of *The Corporation of London v. Attorney-General*, 1 H. L. Ca. observed upon. *Attorney-General v. Corporation of London*, 2 M'N. & G. 247.

2. There is no such rule in equity that the Attorney-General is not entitled to receive costs.

Costs awarded to the Attorney-General to be paid by defendants, who had failed in exceptions to the Master's report. *Attorney-General v. Corporation of London*, 12 Beav. 171.

BANKRUPT DEFENDANT.

Dismissal of bill.—A defendant having answered the bill, and having subsequently become bankrupt, and not having obtained his certificate, moved for an order to dismiss the plaintiff's bill, in circumstances which, but for the bankruptcy, would have entitled him to the order, with costs. The plaintiff, on the motion, undertook not to proceed against the defendant in respect of the subject-matter of the suit; and the Court dismissed the bill, without costs. *Findlay v. Lawrence*, 2 De G. & S. 303.

CASE SENT TO LAW.

Decree.—Where a bill is dismissed with costs, the costs of a case sent to law will not necessarily be included, unless specifically

mentioned in the decree.—*See* *Holden v. Johnston*, 1 H. & T. 247; 1 M'N. & G. 533.

COMPROMISE.

Striking out cause.—Parties compromised the subject-matter of the suit, without providing for the costs: *Held*, that the cause could not be afterwards heard, for the purpose of determining the costs alone, and it was struck out of the paper. *Whalley v. Lord Suffield*, 12 Beav. 402.

Cases cited: *Roberts v. Roberts*, 1 Sim. & S. 39; *Forsyth v. Manton*, 5 Mad. 78; *Gibson v. Lord Crauley*, 6 Mad. 365.

CONFLICTING CLAIMS OF PRIORITY.

How to be done.—The costs incurred in respect of conflicting claims of priority of lien or charge, in a suit for redemption and foreclosure by a puisne mortgagee, ordered to be paid by the parties who failed in such claims respectively, the plaintiff adding to his mortgage debt the costs paid by him in respect of such claim as he had failed in establishing,—the questions having arisen from the acts or conduct of the mortgagor. *Polly v. Wether*, 7 Hare, 372.

CONTEMPT.

Attachment.—A plaintiff was arrested upon a writ of attachment for nonpayment of costs, but it being ascertained that he was privileged at the time of his arrest, he was discharged out of custody, by consent: *Held*, that the defendant was not precluded from issuing a second writ of attachment in respect of the same costs.

Practice as to writs of attachment for nonpayment of costs, as certified by the Clerks of Records and Writs. *Andrews v. Walton*, 2 H. & T. 154; 1 M'N. & G. 380.

See *Attachment*.

CORPORATION.

Re-investment.—*Proceeds of property sold*.—Where the purchase-money for real estate taken by a corporation is directed to be re-invested in real estate, and all the reasonable costs attending such purchase are to be paid by the corporation, there is no limit to the number of purchases or to the costs which are to be allowed, except there is an unreasonable exercise of the direction to invest, so as to occasion vexatious and unnecessary expense.

Where a sum of 141,660*l.* had been paid for the purchase of real estate by a corporation, the expenses of a third and fourth re-investment were thrown upon the corporation. *Jones v. Lewis*, 2 H. & T. 406; 2 M'N. & G. 163.

Case cited in the judgment: *In re Merchant Tailors' Company*, 10 Beav. 485.

COUNSEL.

1. *Second*.—The general rule, that the costs of two counsel only ought to be allowed in taxation, as against an opponent, will seldom be departed from, and applies particularly to cases heard on appeal. *Attorney-General v. Munn*, 1 H. & T. 457.

2. *Third*.—The costs of more than two counsel

disallowed in taxation between party and party, notwithstanding the third counsel was retained after the counsel by whom the pleadings had been drawn had been called within the bar. *Green v. Briggs*, 7 Hare, 279.

3. *Before Master*.—Before the 120th Order of May, 1845, the expense of attending the Master by counsel was not allowed between party and party, except on references for scandal. *Green v. Briggs*, 7 Hare, 279.

See *Retaining Fee*.

CROSS BILL.

Discovery.—*New Orders*.—*Jurisdiction*.—A bill for relief, and a cross bill of discovery filed by the defendant to it, were attached to the Vice-Chancellor of England's Court. The original bill was afterwards transferred and heard by the Vice-Chancellor Knight Bruce, who dismissed it without costs. But the Lord Chancellor, on appeal, reversed the decree, directed issues, and reserved the costs. The answer to the cross bill was not put in until after the original hearing, and was not used at the hearing of the appeal.

Held, that the Vice-Chancellor of England had jurisdiction to dispose of the costs of the cross suit. *Watts v. Penny*, 17 Sim. 45.

See *Security for Costs*, 5.

CROSS COSTS.

Set-off.—Cross costs in two suits ordered to be set-off. *Budge v. Budge*, 12 Beav. 385.

See *Set-off*.

DEMURRER.

Amendment.—The demurrer on the record having been allowed, and a demurrer *ore tenus*, for want of parties, having been overruled, the Court ordered the defendants to pay the costs of the former, but made no order as to the costs of the latter; and gave the plaintiff leave to amend either by adding parties, or striking out the passage which made the new parties necessary. *Macintyre v. Connell*, 1 Sim. N. S. 257.¹

Cases cited in the judgment: *Attorney-General v. Brown*, 1 Swanst. 263; *Mortimer v. Fraser*, 3 Myl. & Cr. 173.

DISMISSAL OF BILL.

See *Attachment*, 1; *Bankrupt*; *Injunction*; *Motion*, 2.

DISCLAIMING DEFENDANT.

The assignee in insolvency of a sub-mortgagor disclaimed: *Held*, that he was not entitled to his costs. *Clarke v. Wilmot*, 1 Y. & C. C. C. 53, observed upon. *Staffurth v. Pott*, 2 De G. & S. 571.

INJUNCTION.

Granted on dismissal of bill.—A bill having been filed to restrain the invasion of a patent

right alleged by the plaintiffs to be their property, the plaintiffs moved for an injunction, and obtained an order of the Court awarding the injunction, notwithstanding the opposition thereto of the defendants. The plaintiffs failed to establish their right in an action at law directed by the Court to be brought by the plaintiffs in equity against the defendants, and the bill was eventually dismissed, with costs, for want of prosecution: *Held* that the defendants were entitled to their costs of resisting the motion for the injunction. *Stevens v. Keating*, 2 H. & T. 176; 1 M'N. & G. 659.

See *Reserved Costs*.

INSUFFICIENT EXAMINATION.

Upon an inquiry before the Master, a party put in an insufficient examination. Upon an *ex parte* motion, he was ordered to pay the costs thereby occasioned. *Alfrey v. Alfrey*, 12 Beav. 420.

JOINT-STOCK COMPANIES.

1. *Winding-up Acts*.—A petition praying, either that a company might be wound up, or that a preliminary inquiry might be directed as to the expediency of winding it up, was dismissed as having been presented without sufficient ground; and the petitioner was ordered to pay the respondent's costs, although the respondent was not liable as a contributory, nor had been served with the petition, but had appeared voluntarily. *Ex parte James, in re Northborough and Watlington Railway Company*, 1 Sim., N. S., 140.

2. *Petition for winding up*.—*Omission of material circumstances*.—*Contributories' attendance before Master*.—*Quere*, whether, where an order for winding up is discharged on account of the omission of material circumstances in the petition, contributories can recover their costs of attending before the Master against the petitioner for winding up. *Ex parte Barnett, in re Ipswich, Norwich, and Yarmouth Railway Company*, 1 De G. & S. 744.

3. *Winding-up order*.—*Costs of one petition to be charged on company*.—*Semble*, that a company ought not to be charged with the costs of more than one petition for an order to wind up its affairs. *Ex parte Turner, ex parte James, in re Madrid and Valencia Railway Company*, 3 De G. & S. 127.

4. *Petition for winding-up*.—*Description out of jurisdiction*.—*Security for costs*.—A petitioner for the usual winding-up order, described in his petition as of a place out of the jurisdiction of the Court, was ordered, on the suggestion of the respondent, to give security for costs, as a preliminary condition to hearing the petition. *Ex parte Latta, in re Royal Bank of Australia*, 3 De G. & S. 186.

And see *Railway Company*, 1.

LAND CLAUSES CONSOLIDATION.

1. *Railway Company*.—*Deposit*.—Money paid into the bank by a railway company under the 85th section of the Land Clauses Act, ordered to be repaid to them under the 87th section, without any deduction for costs payable

¹ Mr. Simons has commenced a new series of his valuable Reports of the Cases decided by the late Vice-Chancellor of England, in which the decisions of the Vice-Chancellor Lord Cranworth are reported.

by them to the land owner. *In re London and Southampton Railway Extension Act*, 16 Sim. 165; *Ex parte Great Northern Railway Company*, 1b. 169.

2. *Transfer to credit of cause.*—Where devisees in trust of a testator, whose estate is in the course of administration in a suit, sell to a railway company under the Land Clauses' Consolidation Act, 1845, the company pays the costs of a petition for transferring the purchase money from the account of the Railway Act to that of the suit. *Dinning v. Henderson*, 2 De G. & S. 485.

LEGATEES.

Charge on real estate.—Real estates were devised in trust to raise a legacy for a class of next of kin. The legacy was raised and carried to a separate account in the suit, and afterwards, costs were incurred in ascertaining the class in the Master's office. Upon petition of the legatees, such costs were held to be a charge on the estate, and were ordered to be raised. *Dugdale v. Dugdale*, 12 Beav. 247.

MARRIED WOMAN.

Refusing to acknowledge a deed.—Where the real estates of an intestate were sold under a decree in an administration, and the heir-at-law a *feme covert*, declined to acknowledge the conveyance to the purchaser, and the costs of the suit exceeded the funds in the cause, the Court directed the costs of the purchasers, occasioned by the refusal of the married woman to make the acknowledgment, to be first taxed and paid; and, subject thereto, that the costs of plaintiffs and defendants should be taxed and paid rateably. *Billing v. Webb*, 1 De G. & S. 716.

MOTION.

1. Costs given, though not asked by the notice of motion. *Butler v. Gardener*, 12 Beav. 525.

2. *Dismissing for want of prosecution.*—A notice of motion to dismiss a bill for want of prosecution, was given before the V. C. of England, although the suit was attached to the Court of V. C. Knight Bruce.

The V. C. gave the plaintiff costs as of an abandoned motion. *Rashleigh v. Mount*, 16 Sim. 390.

3. *To take bill pro confesso.*—Where answer put in before motion.—Under the 76th Order of May, 1845, the Court has jurisdiction to order the costs of a motion by the plaintiff to take the bill *pro confesso* to be paid by the defendant, although the latter puts in his answer before the motion is made. *Spooner v. Payne*, 2 De G. & S. 439.

4. *Second for same object before payment of costs of first.*—A motion being refused, with costs, the party cannot afterwards renew the motion till the costs have been paid. *Oldfield v. Cobbett*, 12 Beav. 91. And see *Receiver*.

PAUPER.

1. Where a plaintiff dismisses his own bill against a pauper defendant, with costs, the defendant is entitled to *dies costs*. *Rubery v. Morris*, 1 H. & T. 400; 1 M'N. & G. 413.

But the existing practice of the Taxing Masters, where costs are awarded *simpliciter* to a party suing or defending in *formd pauperis*, is to tax them as *pauper costs* only, and therefore, where it is intended that the party shall have *dies costs*, the decree or order ought to contain a special direction to that effect. *Rubery v. Morris*, 1 M'N. & G. 413.

2. Although a plaintiff dismisses his bill against a pauper defendant, the practice is not to allow the defendant more than pauper costs. *Rubery v. Morris*, 16 Sim. 312.

3. If a plaintiff dismisses his bill, the defendant, though a *pauper*, is entitled to *dies costs*. *Rubery v. Morris*, 16 Sim. 433.

4. *Annuitant.*—Pauper order discharged, the party being in receipt of an annuity, though it was the subject of the suit. *Butler v. Gardener*, 12 Beav. 525.

5. *Plaintiff becoming such after notice of motion to dismiss.*—Where, after notice to dismiss, the plaintiff serves the defendant with an order to sue in *formd pauperis*, and files a replication: Held, that he must pay the costs of the motion to dismiss. *Smith v. Pawson*, 2 De G. & S. 490.

Case cited: *Ballard v. Catling*, 2 Keen. 606.

PETITION.

Impertinence.—The costs a petition presented under an act of parliament, ordered to be paid by the respondent, notwithstanding the act was a public one, and several of the sections of it were set forth in the petition. *In re Lilley's Trustees*, 17 Sim. 110.

PRIORITY.

See *Conflicting Claim*.

PRO CONFESSO.

See *Motion*, 3.

RAILWAY COMPANY.

1. *Proceedings rendered ineffectual by act of parliament.*—A petition was presented to wind up an incorporated railway company, but before it had been heard, an act passed, exempting such companies. No costs were given on dismissing the petition. *In re Direct London and Portsmouth Railway Company*, *ex parte Cohen*, 12 Beav. 269.

2. *Taking lands.*—Reference to Master.—A railway company took lands, the subject of an administration suit, and in which infants and married women were interested, and a reference was made to the Master in the cause, to ascertain what course was the most beneficial for the parties under disability. The company was directed to pay all the costs, charges, and expenses of the petition and reference. *Picard v. Mitchell*, 12 Beav. 486.

See *Land Clauses*.

RECEIVER.

Motion for tenant to attorn.—On a motion that tenants may attorn and pay their arrears of rent to a receiver, it is not the course of the Court to order the tenants to pay the costs of the motion. *Hobhouse v. Holcombe*, 2 De G. & S. 208.

RESERVED COSTS.

Injunction.—On a motion for an injunction being refused, the costs were reserved to the hearing of the cause; and at the hearing, the injunction was decreed, and the defendant was ordered to pay to the plaintiff the costs so reserved, as well as the general costs of the suit relating to the injunction. But, on appeal, this course of proceeding was disapproved by the Lord Chancellor, and the decree was altered by striking out the order for payment of the reserved costs. *Lewis v. Smith*, 1 M'N. & G. 417.

RETAINING FEE.

Counsel.—*Taxation.*—In taxation between party and party, it is not the practice to allow the common retaining fee to counsel. *Green v. Briggs*, 7 Hare, 279.

SECOND SUIT.

Staying until payment of costs of first.—Motion to stay proceedings in a second suit, until payment by the plaintiff of the costs in the first which had been dismissed, refused, it not appearing that the second bill could be produced by a fair amendment of the first. *Budge v. Budge*, 12 Beav. 385.

SECURITY FOR COSTS.

1. *Taxation.*—*Abandonment of order.*—Upon a motion to discharge an order of course to tax or to give security for costs, the Court ordered the latter only; *Held*, that the client could not, afterwards, by mere notice, abandon the orders and file a bill for the same matter. Such proceedings having, however, been taken by the client, they were stayed until he had paid the costs consequent on the order of course and of the application. *Foley v. Smith*, *in re Smith*, 12 Beav. 154.

2. *Waiver of right.*—A plaintiff described himself as living abroad. Having given notice of a motion, the defendant appeared and asked for time to answer the affidavits, and, he afterwards filed affidavits in opposition: *Held*, that he had not thereby waived his right to security for costs.

A defendant does not, by simply defending an application against him, lose his right to security for costs. *Murrow v. Wilson*, 12 Beav. 497.

3. *Where insufficient though not erroneous description given.*—*Quære*, whether a plaintiff, who in his bill describes himself insufficiently though not erroneously, will be ordered to give security for costs. *Sibbings v. Earl of Balcarres*, 1 De G. & S. 683.

4. *Where description as of place, left at date of bill.*—A plaintiff who inadvertently described herself as of a place which she had left at the date of the filing of the bill, was not ordered to give security of costs. And a motion for that purpose was refused; but, the Court gave the defendant, making it his costs, on his not putting the plaintiff to amend her bill. *Smith v. Cornfoot*, 1 De G. & S. 684.

5. *Cross bill.*—A bill was filed by a mortgagee of a reversionary interest, for sale or foreclosure. The defendant, by his answer, ad-

mitted the debt. Then the defendant filed a bill against the plaintiff, alleging that nothing was due from him to the plaintiff, but that the plaintiff was indebted to him, and that the security had been obtained from him by fraud, as had also been his answer in the original suit, and praying an account and payment of what was due to him from the plaintiff, and re-assignment of the property comprised in the security: *Held*, that the second suit was a cross suit, and that the plaintiff in it, although out of the jurisdiction, need not give security for costs. *Macgregor v. Shaw*; *Shaw v. Macgregor*, 2 De G. & S. 360.

And see *Joint-Stock Company*, 4.

SET-OFF.

At law and in equity.—The Court has no power to set-off the costs recovered at law by the plaintiff in an action against the costs given to the defendant on a renewed and unsuccessful motion for an injunction. *Saunter v. Ferguson*, 1 H. & T. 383.

See *Cross Costs*.

SOLICITOR.

See *Appearance*.

STAYING PROCEEDINGS.

All the purposes of a suit having been answered, the plaintiff moved, before answer, that his costs might be taxed and paid by the defendant, and that, thereupon, all further proceedings might be stayed. Motion refused. *Leigham v. Great Northern Railway Company*, 16 Sim. 173.

TAXATION.

Survivor of several defendants.—The survivor of several defendants, against whom a bill has been dismissed with costs, to be taxed, and paid by the plaintiff, are entitled to proceed with the taxation of their costs, notwithstanding the death of one of such defendants, without a revivor of the suit, and although the surviving defendants and the deceased, in his lifetime, had carried in a joint bill of costs for taxation. *Hunter v. Daniel*, 7 Hare, 281.

See *Security for Costs*.

TRUSTEE.

If a petition is presented under the 10 Geo. 4, c. 56, or under the 11 Geo. 4 and 1 Wm. 4, c. 60, to have a person appointed to convey property in the place of a recusant trustee, the latter ought not to be served with the petition, and, if he is served, he will be entitled to his costs. *In re Third Burnt Tree Building Society, ex parte Armstrong*, 16 Sim. 296.

TRUSTEE RELIEF ACT.

1. Where trustees who pay money into Court under the 10 & 11 Vict. c. 96, deduct a sum for their costs, the propriety of that course can only be questioned by filing a bill. *In re Bloye's Trust*, 2 H. & T. 140; 1 M'N. & G. 488.

2. Where an executor pays a legacy into Court, under the Trustee Indemnity Act, (10 & 11 Vict. c. 96,) his costs of paying it in are to be borne by the estate, but those of paying it

out by the legatee. *In re Cawthorne*, 12 Beav. 56.

3. *Payment of dividends out of income.*—A fund was paid into Court under the Trustee Indemnity Act. The tenant for life petitioned for payment of the dividends. There being no general estate applicable, *held*, that the costs of the petition ought to be paid out of the income and not out of the corpus. *In re Lorimer*, 12 Beav. 521.

WILL.

Difficulties of construction.—Unappointed portion.—The rule that the costs arising from difficulties of construction of a will fall on the residuary estate, does not apply to an unappointed portion of a fund. *Trotlope v. Routledge*, 1 De G. & S. 562.

WINDING-UP COMPANIES.

See *Joint-Stock Companies*.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

After Trinity Term, 1851.

AT LINCOLN'S INN.

[See the last No. for the Sittings down to the 28th June. The other Sittings are as follow:—]

Lord Chancellor.

Monday . . . June 30	} Appeals.	
Tuesday . . . July 1		
Wednesday . . . 2		
Thursday . . . 3	} The 2nd Seal—Appeal Motions.	
Friday . . . 4		(Petition-day) Unopposed Lunatic Petitions, and Cause Petitions.
Saturday . . . 5	} Appeals.	
Monday . . . 7		
Tuesday . . . 8		
Wednesday . . . 9		
Thursday . . . 10		
Friday . . . 11	} (Petition-day) unopposed Lunatic Petitions and Cause Petitions.	
Saturday . . . 12		
Monday . . . 14	} Appeals.	
Tuesday . . . 15		
Wednesday . . . 16		
Thursday . . . 17	} The 3rd Seal—Appeal Motions.	
Friday . . . 18		(Petition-day) unopposed Lunatic Petitions and Cause Petitions.
Saturday . . . 19	} Appeals.	
Monday . . . 21		
Tuesday . . . 22		
Wednesday . . . 23		
Thursday . . . 24		
Friday . . . 25	} (Petition-day) Lunatic Petitions and Cause Petitions. (unopposed first).	
Saturday . . . 26		
Monday . . . 28	} Appeals.	
Tuesday . . . 29		
Wednesday . . . 30		
Thursday . . . 31	} The 4th Seal—Appeal Motions.	
Friday . . . Aug. 1		(Petition-day.)

N.B. The days his Lordship attends the House of Lords on Appeals excepted.

NOTE.—The Court will rise for the Vacation on Friday, the 8th of August, 1851.

Vice-Chancellor Knight Bruce.

Monday . . . June 30	} Causes and Claims.	
Tuesday . . . July 1		
Wednesday . . . 2	} Short Causes, Short Claims, Bankrupt Petitions, and Claims.	
Thursday . . . 3		The 2nd Seal—Motions and Claims.
Friday . . . 4	} Pleas, Demurrers, Exceptions, and Further Directions.	
Saturday . . . 5		Petitions and Claims.
Monday . . . 7	} Causes and Claims.	
Tuesday . . . 8		
Wednesday . . . 9	} Short Causes, Short Claims, Bankrupt Petitions, and Claims.	
Thursday . . . 10		Causes and Claims.
Friday . . . 11	} Pleas, Demurrers, Exceptions, and Further Directions.	
Saturday . . . 12		Petitions and Causes.
Monday . . . 14	} Causes and Claims.	
Tuesday . . . 15		
Wednesday . . . 16	} Short Causes, Short Claims, Bankrupt Petitions, and Claims.	
Thursday . . . 17		The 3rd Seal—Motions and Causes.
Friday . . . 18	} Pleas, Demurrers, Exceptions, and Further Directions.	
Saturday . . . 19		Petitions and Causes.
Monday . . . 21	} Causes and Claims.	
Tuesday . . . 22		
Wednesday . . . 23	} Short Causes, Short Claims, Bankrupt Petitions, and Causes.	
Thursday . . . 24		Causes and Claims.
Friday . . . 25	} Pleas, Demurrers, Exceptions, and Further Directions.	
Saturday . . . 26		Petitions and Causes.
Monday . . . 28	} Causes and Claims.	
Tuesday . . . 29		
Wednesday . . . 30	} Short Causes, Short Claims, Bankrupt Petitions, and Causes.	

The Legal Observer,

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LAW OF EVIDENCE AMENDMENT BILL.

CONTEMPORANEOUSLY with the publication of our last number, this measure obtained a third reading in the House of Lords, and has since been presented, and, as of course, read a first time in the House of Commons.

The leading provision of the bill, as originally framed, was, to render the parties and their wives admissible witnesses in actions at law, and in all legal proceedings. Whether considered in reference to the principle involved—as mere matter of procedure—or in respect to its possible influence upon the social relations, the proposed change was manifestly of the gravest importance. To some considerate and experienced minds the project seemed pregnant with mischief, whilst many who regarded it without apprehension, and even with approval, nevertheless felt themselves unable, even after much reflection, to realise all the probable consequences resulting from such an alteration in the law.

As the bill was not introduced upon the responsibility of the government, nor in accordance with the suggestion of any of the numerous commissions appointed from time to time to inquire into and report upon the state of the law with a view to its amendment, it seemed at once reasonable and desirable that such an experiment should obtain all the consideration that the forms of parliament permitted, before obtaining the legislative fiat. With this view the governing body of the Incorporated Law Society, after taking measures to obtain the sense of the largest branch of the legal profession, in reference to the proposed change, thought it expedient, at an early period of the Session, to cause a petition to be presented to the House of Lords, praying that

the bill should be referred to a Select Committee, “by whom evidence might be taken and the subject duly weighed in all its bearings.”¹ This judicious, timely, and temperate interference on the part of the Incorporated Law Society, was, as matter of course, blamed by those unreasoning opponents, who find ground for condemnation in all that is done, and all that is omitted to be done, by the Society. The petition, however, was successful.

The bill, as suggested by the petitioners, was referred to a Select Committee of their Lordships. What evidence was taken before the Committee we are not in a position to state, but the proceedings of the Select Committee, we presume, will be printed and laid upon the table of the House of Commons in due course. At all events, the bill, as reported by the Select Committee on the 23rd June, was amended in some important particulars, to which we now propose to direct attention.

The bill, when referred to the Select Committee, repealed the whole of the proviso to the 1st sect. of the Act 6 & 7 Vict. c. 85, and enacted that parties and the husband and wife of such person respectively should be competent and compellable to give evidence. The amended bill leaves unrepealed that portion of the proviso to 1st sect. of the Act 6 & 7 Vict. c. 85, which declared that the “husband or wife of such parties respectively,” should continue to be incompetent as heretofore, and the enacting clauses, as amended, distinctly recognise the principle, that neither in civil nor criminal proceedings shall a husband be competent or compellable to give evidence for or against his wife, or a wife competent or

¹ This petition, which was presented on the 7th March last, by Lord Beaumont, was printed in the Leg. Obs. of Saturday, March 15th, p. 368.

compellable to give evidence against her husband. The enacting clauses in reference to this subject, as amended by the Select Committee, are as follow:

"On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding, in any Court of Justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf the suit, action, or other proceeding, may be brought or defended, shall, except as herein-after excepted, be competent and compellable to give evidence, either *visd voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceedings."

"But nothing herein contained shall render any person, who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall in any proceeding, civil or criminal, render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband."

The inviolability of domestic confidence is recognised by this amendment; and in order to preserve the administration of justice from scandal, and public decency from being outraged, it is proposed to except from the operation of the act, "any action, suit, proceeding, or bill, in any Court of Common Law, or in either House of Parliament, instituted in consequence of adultery, or to any action for breach of promise of marriage."

In order, we presume, that where one party means to rely upon his own testimony to establish his case, his adversary should have the opportunity of meeting him with evidence equally objectionable, the following clause was introduced after the bill was referred to a Select Committee:

"That in case any such party as aforesaid shall intend to be examined as a witness on his own behalf, he shall give notice in writing to the adverse party, his attorney, or agent, of such intention, fourteen days at the least before such examination shall be taken, or otherwise such party shall not be admissible to give evidence; and in case any such party shall intend to call the adverse party and witness, he shall cause such process as would in the particular case enforce the attendance of any other witness to be served upon him four days at the least before the examination of such adverse party shall be required to be taken, or otherwise such adverse party shall not be liable to be examined."

By a subsequent clause, the Common Law Courts are authorised, on application by either of the litigants, to compel the inspection of documents, the taking of examined copies, and the production of such documents to be duly stamped, in all cases in which a discovery might now be obtained in a Court of Equity at the instance of the applicant. Foreign and Colonial Acts of State, judgments, decrees, orders, and other proceedings, are also rendered admissible and provable by certified copies, without proof of the seal, signature, or judicial character of the person signing the same. Apothecaries' certificates are also rendered admissible without proof of the seal, and documents admissible without proof of the seal or signature in England or Wales, are equally admissible in Ireland or the Colonies, whilst documents admissible in Ireland or the Colonies, are admissible in England under the like circumstances. It is also provided, that registers of British vessels and certificates of registry, shall be admissible as *prima facie* evidence of their contents, without proof of the signature, and to give effect to these various provisions, it is proposed to enact, that persons forging the seal, stamp, or signature of the documents referred to, or tendering such forged documents in evidence, knowing them to be false or counterfeit, shall be guilty of felony, and liable upon conviction to transportation or imprisonment.

We concur in the statement contained in the petition of the Law Society already referred to, that the proposed alterations in the law relating to the inspection and proof of documents, "are calculated to introduce important improvements in the administration of justice." Whether they are framed in such a manner as to give full effect to the intentions of those by whom the bill was framed, on those by whom it is supported in parliament, is a question well deserving consideration, and which will admit of being more ably and judiciously discussed during the progress of the measure through the House of Commons.

PROPOSED CREATION OF LEGAL FEES.

LORD REDEBELL, who succeeded to the important office of Chairman of Committees to the House of Lords, upon the resignation of the late Lord Shaftesbury, and who has already acquired the reputation of a first-rate man of business, has lately made a suggestion with respect to the creation of

legal peers, which is admitted, on all hands, to be eminently deserving of consideration. The proposal is, that the Chiefs of the three Courts of Common Law, and an equal number of Equity Judges, should be entitled to seats in the House of Lords during their retention of office. The direct and immediate object of such a creation is, to increase the judicial strength of the House of Peers; and when it is recollected that, according to our legal constitution, the House of Lords is the tribunal of the last resort, and that all the other judicial tribunals of the country are bound to administer the laws in conformity with its decisions, a plan, the tendency of which is to concentrate in that assembly a large amount of the highest degree of judicial ability, cannot fail to be regarded as of the utmost importance.

The manner in which Lord Redesdale suggested, that the proposed creation should take place was, by address to her Majesty to annex baronies to the offices of the judges it was deemed desirable to elevate, and upon appointment the holders of such offices, would, as of course, receive summonses as the bishops now do, to take their seats in parliament. Lord Campbell, whilst admitting the great importance of Lord Redesdale's plan, suggested a practical difficulty, which, however well founded, is certainly not of sufficient weight to interfere with the execution of a project to which no substantial objection has been offered. The Lord Chief Justice intimated, that in his opinion her Majesty has not power to grant a peerage during the retention of a particular office, and that this could only be done by an act of the Legislature. The passing of an Act of Parliament for such a purpose, we apprehend, would be attended with little difficulty. Were it otherwise, her Majesty has the undoubted right to grant a peerage for life to any of her subjects.

All the advantages contemplated by Lord Redesdale's proposal, together with some others, may be secured by creating the possessors of the judicial offices referred to, peers during their own lives. It would frequently be desirable, and in no instance, that we can suppose to occur, objectionable, that a retired Chief Judge should have a seat in the House of Lords, after the resignation of his office; whilst the mischiefs arising from permanently enlarging the peerage, and granting hereditary honours to those whose descendants may be left with insufficient fortunes to maintain the dignity

of the position, would be effectually avoided. It is to be hoped that the substance of Lord Redesdale's scheme, however it may be modified in its form, will obtain the support to which it seems justly entitled. It is a safe reform and in the right direction, to add honour and dignity to those placed at the head of the legal profession, and it is gracefully and appropriately proposed by one who, in addition to his personal distinctions, derives his title from one of the greatest Equity lawyers this kingdom has ever produced.

THE CHARITABLE TRUSTS BILL.

We stated last week the general objections which apply to the constitution of a Board of Commissioners to superintend and control all the charities of the kingdom. Those objections prevail, in a still stronger degree, to the interference of the Commissioners with the great hospitals in the City of London, the management of which is vested in governors elected according to the rules of the hospital, as well under charter as act of parliament, including the lord mayor, aldermen, and twelve common councilmen,—the other governors being donors of 100*l.* to the funds of the hospital.

These royal hospitals should not be confounded with the charitable institutions, the funds of which have been provided by benefactors long deceased, and where all connexion and interest have ceased between the original donors and the present trustees.

The distinctive feature of these hospitals is, that the entire management is confided to a body of governors who are themselves large contributors to the funds of the institution, and who perform the duties of their office solely from motives of charity. As these individuals gain nothing by their exertions, they have nothing to lose by their resignation, and have no reason to submit to control or interference. On the other hand, their long association with these hospitals and participation in their government, often-times creates a strong interest, which manifests itself in large donations and still larger legacies.

The effect of the provisions of the bill upon these hospitals will be, to subject those who now undertake the arduous duties of management to great personal annoyance in compulsory attendance on the Commissioners, and to a most unnecessary control in the performance of duties which they undertake at present willingly, because they

have a just pride and satisfaction in their due fulfilment.

It is, moreover, unjust and impolitic to tax the funds of these public hospitals for the purposes of this bill, unless its provisions are likely to be beneficial and useful, and it is manifest such provisions will be found, on the contrary, to be very mischievous to their interests.

It will be found, also, that a vast multitude of other charities will be equally prejudiced by the uncalled for interference of these official personages, the directors or committees of which will not submit to the dictation of the Commissioners, their clerks, and assistants. All the benevolent societies which depend principally on the continuance of donations and subscriptions should be exempted from the provisions of the bill, except so far as they may be amenable to the jurisdiction of the Courts. Nearly 10,000*l.* a-year is to be raised and expended by the proposed establishment, exclusive, of course, of the costs which the solicitors to the Commissioners or the Attorney-General may recover from the funds of the charity or the persons who from error or mistake may be liable to proceedings at the instance of the Board. It is evident that, looking at the multitude of governors, trustees, directors, and committees throughout the country, the powers proposed to be conferred on the Commissioners may become intolerably oppressive, and impair, if they do not ultimately destroy, the larger part of the institutions which they profess to protect.

A summary, inexpensive, and speedy remedy for abuse is desirable, but a central board of control is altogether unnecessary.

ARRANGEMENT CLAUSES

OF THE

BANKRUPT LAW CONSOLIDATION ACT.

THE Court of Exchequer has recently come to a judicial decision upon the construction of the clauses relating to arrangements by deed, in the Bankrupt Law Consolidation Act, 1849, which it is of great practical importance should be known to, and correctly understood by, the profession.

The act 12 & 13 Vict. c. 106, contains two sets of clauses, relating to arrangements between debtors and their creditors without bankruptcy. The first set of clauses relate to arrangements under the control of the Court, in which the first proceeding is a petition to the Court of Bankruptcy from a

debtor unable to meet his engagements, setting forth the cause of his inability and praying that his person and property may be protected from the process. The second set of clauses contemplates the case of an arrangement by deed, or memorandum of arrangement, between a debtor and six-sevenths in number and value of his creditors, and the main purpose and object of this division of the statute is, to render the instrument executed by such a proportion of the debtor's creditors as effectual and obligatory upon those who shall not sign as if they had in fact affixed their signatures to the deed. The sections of the act, relating to arrangements of the latter class, are numbered from 224 to 229, both inclusive, and upon reference to the first of these clauses it will be found that the instruments intended to be rendered valid are, deeds "signed by or on behalf of six-sevenths in number and value of the creditors whose debts amount to 10*l.* or upwards, touching such trader's liabilities and his release therefrom, and the distribution, inspection, conduct, management, and mode of winding up his estate, or all or any of such matters, or any matters having reference thereto."

The clauses in question (as many of our readers are aware) were much discussed and considered during the period when the Bankrupt Law Consolidation Bill was before a Select Committee of the House of Lords, and since the act came into operation very many arrangements have been entered into under deeds, which were supposed to have come within its protection. It is to be feared that in some instances the parties to such deeds, overlooking the circumstance that the arrangement to be carried out was not purely of a voluntary character as regarded all the creditors, permitted stipulations to be introduced which essentially affected the validity of the instrument, and rendered it wholly inoperative as regarded the creditors who had not signed. For example, a deed of arrangement containing the common provision that creditors not entering into the arrangement and executing the deed within a period limited and specified, should derive no benefit under it, was held to be wholly inoperative against a creditor who had not signed.¹

During the last Term, however, the question was raised for the first time, whether any deed, which did not contemplate the dis-

¹ *In re Manchee*, per *Evans*, Commissioner. 16th January, 1851.

solution of the whole of the debtor's effects; could be within the provisions of the Bankrupt Act, so as to bind creditors who had not executed? In the case referred to,² six-sevenths of the creditors agreed by a memorandum of arrangement to accept a composition of 6s. 8d. in the pound on their respective debts, payable at certain times, and to permit the debtor to manage and dispose of his estate under the inspection of three of the assenting creditors, for the benefit of the whole. It was also stipulated in the deed, that if the debtor was molested by any of his creditors, it should be competent for him to plead the deed in answer. To an action by a creditor who had not executed the deed, the defendant, by his plea, relied on the deed, and the question arose upon demurrer, whether the plea was a sufficient answer to the action? The Barons of the Exchequer, after a lengthened argument, came unanimously to the conclusion, that the plea could not be supported, and that the arrangement by deed contemplated by the 224th and subsequent sections of the Bankrupt Act, meant a distribution or division of the *whole* assets of the insolvent trader, and not an arrangement by which the debtor should have any portion of the surplus. In other words, as it was suggested, the Legislature intended merely to give creditors all the benefit of a bankruptcy, without the expense and delay of the machinery of the Court of Bankruptcy.

The effect of this decision (if it should be upheld) is, that the clauses in the Bankrupt Law Consolidation Act relating to arrangements by deed are wholly inapplicable to cases of composition with creditors, and that if any such deeds have been entered into upon the supposed authority of the act, such arrangements will have no obligatory force upon creditors who have not executed, and afford the debtor no protection against such creditors. It was suggested by the Lord Chief Baron, in giving judgment, that if the construction the Court put upon the act of parliament was supposed to admit of doubt, the circumstances under which the question arose enabled the parties to take the opinion of a Court of Error upon it, and considering its great importance, it is not impossible that this course may be pursued.

ATTORNEYS' AND SOLICITORS' REGULATION ACT AMENDMENT.

THIS bill, introduced by Lord Somerhill on the 27th June, recites the 1 & 2 Geo. 4, c. 48; the 3 Geo. 4, c. 16; the 1 Vict. c. 55; and the 8 & 9 Vict. c. 66, "to enable her Majesty to endow new colleges for the advancement of learning in Ireland;" and that a faculty of law has been established in each of the Queen's Colleges; and that a body corporate has been constituted by Royal Charter, under the name of "The Queen's University in Ireland."

It then recites that it is expedient that the first-recited acts should be extended to students who have obtained or shall hereafter obtain the Degree of Bachelor of Arts, the Diploma of Elementary Law, or the Degree of Bachelor of Laws in the Queen's University in Ireland, and to students of the Queen's Colleges who have attended and who shall attend the lectures of the Professors of the Faculty of Law in the Queen's Colleges:

It is therefore proposed to enact—

1. That the provisions of former acts relating to the admission and enrolment as attorneys of Bachelors of Arts or Laws at Oxford, Cambridge, and Dublin, be extended to the Degree of Bachelor of Arts, Diploma of Elementary Law, and Degree of Bachelor of Laws in Queen's University in Ireland.

2. That the provisions of former acts as to persons bound for five years, and serving part of that time, not exceeding one year, with a barrister or special pleader, be extended to students of Queen's Colleges attending lectures and passing examinations in Faculty of Law, during two collegiate years.¹

3. That the certificate of the Dean of Faculty be sufficient evidence.

CERTIFICATE DUTY REPEAL.

WE have once more to remind our readers of the motion of Lord Robert Grosvenor for leave to bring in the Bill to Repeal the Certificate Duty. It stands first on the list of public business at half-past four o'clock on Tuesday next, the 8th instant. We believe that due preparation has been made for an effective appeal to the justice of parliament, and a very considerable majority is expected in favour of the motion. The number of the majority will mainly depend on the exertions used by the profession amongst their friends in the House. We therefore trust that no pains will be spared to secure a full attendance at the commencement of the evening sitting. None of the Circuits

² *Drew and others v. Collins*, Exch., 9th June, 1851.

¹ The attendance of certain courses of Lectures in England ought also, perhaps, to entitle the clerk to admission after a service of four years.

will have begun, and therefore the Bar may be reasonably expected to support the measure by their votes. It is a question, not of party, but of justice.

THE COUNTY COURTS' EXTENSION BILL.

THIS bill, as amended by the Committee, gives power to the Lord Chancellor to make general orders for delegating inquiries in suits in Chancery to the Commissioners in Bankruptcy and the County Court Judges;—to take evidence therein and report to the Court of Chancery; also, to appoint them officers of the Court and enable them to take pleas, answers, &c.

The bill, as it came from the House of Lords, proposed to effect these alterations by an express enactment, with power to the Court to regulate the practice. The bill, however, only authorizes the alterations to be made, but does not enact them.

It also empowers the Lord Chancellor to fix the office fees to be paid for the proceedings in these matters in Equity,—authorizes the appointment of ten additional judges of the County Courts, and the increase of their salaries to 1,500*l.* a year.

The Law Society had suggested that power should have been given to the Judges and Commissioners to take evidence in support of petitions and motions before the Court, and to compel the attendance of witnesses who were unwilling to make affidavits of the facts within their knowledge; but this recommendation has not been adopted—the whole subject of evidence being under the consideration of the Commissioners, and on which they are expected to make a separate report.

Some improvements in the course of proceeding in the County Courts were also suggested; but it does not appear that the promoters of the measure are disposed to listen to practical details. The most interesting clauses in the bill seem to be those which relate to the increase of judges and salaries.

The proposed clause in the County Courts' Extension Bill, as to the exclusive audience of barristers in cases from 20*l.* to 30*l.*, refers to "any other act other than the partly recited act," and will operate as a repeal of the act of last Session, (13 & 14 Vict. c. 61,) on the "audience" question, the recited act being only that of 9 & 10 Vict. c. 95, giving jurisdiction up to 20*l.* only.

It is therefore an *ex post facto* law to

this extent. And the attempt is the less excusable, because, when the act of last Session was in the House, a notice given for this very purpose by a barrister, was abandoned as hopeless. It is in fact a disingenuous mode of trying to carry *ex post facto* and by a side wind a privilege which, at the proper time, was not even asked for.

But this is not all. The clause proposes, that in cases above 20*l.*, the practice as to barristers and attorneys shall be like that of the Superior Courts; and, according to the law of the Superior Courts, as laid down by Lord Campbell, a barrister may act *without an attorney*. Lord Campbell at the same time expressed a strong opinion against such a law being acted upon in practice; and both he and the Lord Chancellor opposed an attempt in the House of Lords to repeal that part of the County Courts' Bill which prohibited it in those Courts. They made some strong observations on the subject,—the Lord Chancellor referred to instances of barristers "touting" at coffee-houses for employment.

Now the proposed clause will repeal the prohibition of the practice in the County Courts' Act as to all actions between 20*l.* and 30*l.*, and we shall have County Court barristers, in all that class of cases, taking their instructions from the parties; and, while they monopolize the advocacy, excluding the attorneys from collecting and stating the evidence in support of the case.

Since writing the above the clause has been postponed in consequence of a strong opposition, but may be revived. We trust, however, that consistently with their former decision the House of Lords will not sanction the encroachment.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

EQUITY AND CONVEYANCING REFORMS.

WE select a further part of the Annual Report of the Committee of Management, comprising *Equity and Conveyancing Reforms*: subjects just now of great professional interest.

Equity Reform.—In their last Report, the Committee expressed great hopes that the Session would not pass away without witnessing the attainment of at least one important measure of Equity Reform. Subsequently to the date of that Report, the Committee suggested to the various Provincial Law Societies the advisability of petitioning in favour of the bills then before Parliament; and petitions were consequently presented from the Societies of Liverpool

Leeds, York, Hull, Bristol, and Kent. The Committee also presented a petition which was signed by a considerable number of the principal persons in London, presiding in the Courts. Shortly afterwards, Mr. Turner introduced his bill, which provided for two of the points which have been constantly urged by the Association, since its first formation, by enabling suitors to take the opinion of the Court on special cases; and by enabling the executors or administrators of deceased persons to ascertain whether there are any outstanding debts, affecting the personal estates of such persons, without the delay and expenses of suits to administer such estates. The Committee, therefore, at once presented a petition in favour of that bill, which was passed with very little difficulty, and the Committee believe may become of considerable value to the profession and the public. For the purpose of bringing it into efficient operation, it contained a power for the Lord Chancellor to make general rules regulating the practice under it. Without these rules, the Committee perceived that the act must remain very nearly a dead letter; and they therefore, at once drew up a series which they submitted to Mr. Turner himself, and to the Masters in Chancery; and, after some slight modifications, received their authority to lay them before the Lord Chancellor, backed by their approval. This the Committee accordingly did, early in the month of August last; and they accompanied them by a letter, urging upon his lordship the desirability of losing no time in enabling the act to be brought into operation.

"The bill, which the Committee prepared, to give the Masters in Chancery primary jurisdiction in certain cases; and which, at the date of their last Report, had just been read a second time in the House of Lords, was subsequently passed by that House, and also read twice in the House of Commons. It appeared, however, to some influential parties in the Lower House that enough had then been done for one Session in the matter of Equity Reform; and the third reading of the bill was, therefore, postponed for three months. As soon as the government shall have announced what are their intentions upon the subject, for this Session, the Committee will be enabled to determine whether it will be expedient, at present, to re-introduce the bill in the House of Commons.

"The whole subject of Equity Reform has, however, been referred to the Royal Commission, which has been already alluded to, and, in consequence of no solicitor having any official connexion with that Commission, the Committee, in January last, passed a resolution expressing their opinion that means should be taken, independent of the Commission, to inquire into and report upon the subjects embraced therein; and that the Incorporated Law Society should be applied to, to take the lead in the matter, and to consider by what means the necessary information could be best obtained, and such a report made public, as might

serve as the foundation for solid improvement in the practice of the Courts, in those points which require an efficient remedy. This resolution was communicated to the Incorporated Law Society; and the Council, in consequence, referred it to their Equity Committee to inquire into the practice of the Court of Chancery, and the best means of improving it, with power, for that purpose, to call in the assistance and advice of any members of the profession generally, who might be willing to aid in the inquiry. The Committee thereupon offered all the assistance in their power to the Equity Committee of the Incorporated Society, towards efficiently carrying out the objects they had in view. The Equity Committee accordingly, acting under the power delegated to them by the Council, associated with themselves a considerable number of the Managing Committee of this Association, together with several other gentlemen of standing in the profession; and the Equity Practice Committee thus constituted are actively proceeding with their labours. The Committee feel confident that very important results will flow from this proceeding, and the Report when presented, will justify the views they have always entertained with regard to what ought to be the position of the profession; and will justify the observations they have here felt it right to make, and the claims they have felt bound to advance.

"The only subject that remains to be noticed connected with the Equity Branch of Law, is that of the proposed alteration and distribution of the functions now united in the office of Lord Chancellor. This subject legitimately comes under the consideration of the Association, inasmuch as it immediately affects the question of Chancery Appeals: it has accordingly received much attention, and the Committee have presented a petition to the House of Commons, in which they state that there are two great evils affecting the present mode of determining Chancery Appeals: first, that an appeal from the ordinary tribunals, presided over by the Master of the Rolls, and the Vice-Chancellors to the Lord Chancellor, is an appeal from one man to one man—a fact which necessarily tends very much, at once, to encourage litigation, and to prevent the judgment given on the appeal being satisfactory to the losing party, especially in cases where the original judgment is reversed; secondly, that an appeal from the Lord Chancellor to the House of Lords is practically open to the same objections, and, frequently, to the additionally unsatisfactory characteristic that the judge appealed to is the very judge who is appealed from, so that the nominal appeal is, in reality, only a rehearing of a most expensive kind. That the only mode of meeting this objection that is at present practicable, would be to form a Court of Appeal from any one of the Equity Judges to the others of them sitting together, according to the analogy of the Exchequer Chamber at Common Law. That such a system has been for short periods in actual opera-

tion, when the keepership of the Great Seal has been in commission, and that the result, as deduced from the authorized reports of the decisions, has been far from satisfactory. That the satisfactory working of the system in the Exchequer Chamber is absolutely dependent upon the fact, that in each of the Courts separately there is already a plurality of judges. That when this is not the case, the judgments of the Court of Appeal will never be satisfactory to the public, who will always be liable to entertain the belief that judges mutually reviewing each others' decisions, will be mutually indulgent. That all experience shows that no arrangement can be permanently satisfactory to the public, which does not provide that the Court of Appeal shall consist of a plurality of judges, who shall not themselves be liable to have their judgments reversed by the judges from whom appeals are brought to them. That from the present state of the business in the Court of Chancery, there is an evident necessity for a considerable and permanent increase in the strength of the Judicial Staff to whom appeals may be submitted. The Committee, therefore, proposed the following arrangement of the Equity Judges:—

"The ordinary Judges of the Court to be the Master of the Rolls, and three Vice-Chancellors, have concurrent jurisdiction, to hear all cases in Chancery and lunacy. The formation of a separate Court of Appeal, to consist of three permanent judges, who should hear all appeals from any of the ordinary judges, and also those from the Commissioners of Bankruptcy. The House of Lords to remain the Court of ultimate Appeal, but no appeal to be allowed to that house unless there should have been a difference of opinion among the judges of the Court of Appeal.

"The House of Lords, in hearing appeals, to have the assistance of the Judicial Committee of the Privy Council, and also that of the Chancery Judges of Appeal.

"The Committee consider that it would be a further improvement that all the appeals at present heard by the Judicial Committee of the Privy Council should be submitted to the House of Lords so aided, which would thus become in every case, the final tribunal. They did not, however, think it would be wise to mix up that question with that of Chancery do that of the Lord Chancellor, by a private letter to his lordship, to the important principle, that inasmuch as all property depends for its very existence, as such, on the maintenance of Courts of Justice, without which all individual rights would be reduced to the law of the strongest, therefore the expenses of the judicial establishments of the country ought to be shared by the whole of the property which so owes its existence to them, by being defrayed out of the general income of the country, and not by the particular suitors driven to the Court. They also suggested that the proposed alterations in the Judicial Staff in the Court of Chancery afforded an opportunity, which ought not to be neglected, recog-

nising this principle, so far as that Court is concerned.

"The Committee have also endeavoured to call attention to the fact, that not only are the Chancery Suitors compelled to pay for establishments which exist for the benefit of the public in general, and not for those suitors exclusively, but that those suitors have been now, for at any rate the last two years, annually taxed to an amount exceeding by one-third that actually required to discharge all the expenses of the Court. This fact appears upon the face of the returns, annually made to parliament of the state of the funds of the Court; which returns show, that during the last two years, a surplus taxation has been levied, amounting to upwards of 106,000*l*. This grievous oppression is not only an evil to the suitors who actually pay it, but it necessarily tends very greatly to prevent parties having just rights from appealing to what it appears a mockery to call the *protection* of the Court; and it is also a grievance upon the solicitors, who are thus compelled to be the instruments of judicial extortion upon their clients, whose interest it is their duty to defend. The amount of the various fees producing this enormous sum is a matter entirely within the discretion of the Lord Chancellor; and hitherto the only advice to which he has been accessible, has proceeded from those officers of the Court, who are interested in accumulating a large surplus, as a guarantee, not only for salaries, but for retiring pensions and compensations, in the event of a reform of the Court.

"The Committee have continued to urge that a large proportion of the delay and expense, at present incidental to Chancery proceedings, arises from the entire absence of any efficient supervision over the offices, where the superior officers are practically irresponsible for the due discharge of either their own duties or those of their subordinates, who are not appointed by them, and over whose tenure of office they have no control. The Committee contend that in all the offices a record should be kept, somewhat similar to that which is kept in the Enrolment Office, showing the amount and progress of all the work performed. That the head of each department ought to have the control over all his subordinates, and ought, then, to be responsible for the due performance of all their duties.

The Committee then state, that shortly after their Letter to the Lord Chancellor, the Order of 23rd March, 1851, abolished several of the fees and reduced others, and they thus proceed:—

The Committee are glad to accept this order as an instalment; at the same time, they can look upon it only as such, and they do not think that it is at all satisfactory in amount. The Committee do not believe that the total amount of relief, conferred by it upon the suitors, will at all exceed ten thousand a

year;¹ and there will thus still remain a surplus of more than 40,000*l.* a year to go to the further increase of the enormous accumulations already in the hands of the Court. This is a question that equally concerns the public and the profession; and, in the interest of both, therefore, the Committee will continue their endeavours to procure a very much larger reduction of fees, even if they are unsuccessful in obtaining the recognition of the true principle they have above set forth.

Conveyancing Reform.—In the department of Conveyancing, Mr. Drummond's Bill, against which the Committee petitioned, subsequent to the date of the last Annual Meeting of this Association, was withdrawn without a struggle, and the place it occupied in the attention of the Committee is now filled by the Bill for the Registration of Assurances, which, on the 21st of February, was introduced into the House of Lords, by Lord Campbell, on behalf of the government. Most of the Law Lords, on that occasion, said a few words on the subject, and all of them expressed themselves in favour of the principle of the bill, though without committing themselves to an approval of its details. The second reading took place on the 17th March, and the bill was then referred to a Select Committee.

The House of Commons, having, in both of the last two sessions, committed itself to an approval of the introduction of a general registration; the second reading of Mr. Drummond's bill, having been carried, in the session before last, in spite of the strenuous opposition of government; government having now introduced their own measure, and that measure having been received with general favour in the House of Lords; it does not appear likely that any important opposition to its becoming law this session will arise within the walls of parliament; it behoves, therefore, the profession to exert themselves, without delay, if they wish to influence the fate of the measure. The Committee have sent copies of the bill to all the Provincial Law Societies, and have requested them to ascertain and communicate the wishes of the profession. In their own opinion, the measure is open to very grave objections. The revolution it would effect in conveyancing practice, if it could be shown to be for the general benefit of the public, they feel ought not to be urged against it, but they entertain grave doubts, whether it would not, on the contrary, both fail to secure the benefits Appeals. They, however, took advantage of this opportunity of calling the attention of the House, as they had previously endeavoured to anticipate from it, and, at the same time, introduce new and serious sources of doubt, expense, and delay.

"The bill is intended to make titles to land more certain in their nature, more easy in their investigation, and more economical in their transfer. The Committee cannot here explain

at length their reasons for doubting whether, if passed, it would, in fact, be productive of these benefits. It will be their duty to endeavour to represent them to the legislature, in the most forcible way in their power; but they are glad here to have the opportunity of suggesting, for the consideration of their professional brethren, the following points, which appear to them to have an important bearing upon the question.

"The proposed measure includes an entire system of maps. It is not proposed that these maps should be made evidence of the identity of the property, and it is clear that they could not be so unless every boundary, and every change in every boundary, was laid down after a judicial decision between the adjoining owners, which would alone make the measure impracticably expensive. But, if not evidence, the maps will be of no more service than those at present commonly inserted in the margin of Assurances of Land, and the necessity for evidence of identity will not be diminished, although, on the other hand, it is to be feared that cases may arise of unprofessional persons being led into the serious error of acting upon the supposition that these formal and public maps are legal evidence.

"The Committee believe, that there are not less than 300,000 assurances affecting land, executed every year. This would give 1,000 deeds to be dealt with according to the provisions of the act, on every working day throughout the year; and the promoters of the measure believe that one of its effects will be very greatly to increase the number executed at present, whatever that may be. The whole of this immense and rapidly-accumulating mass, must, of course, be stored in fire-proof apartments, and the expense of the buildings and staff of officers thus necessitated would evidently be something enormous.

"The promoters of the bill appear to imagine that its effect would be to render every title dependent only upon the deed last executed and registered; but this cannot be so, as it must still remain necessary to ascertain whether the conveying parties in the deed have acted only according to their legal power, and for this purpose an investigation of the title, as at present, will be necessary. The bill, therefore, will not obviate the necessity of long abstracts and expensive investigations of complicated titles. Again; it is intended that the original deeds shall be deposited at the office in London; in the case, therefore, not only of every transfer involving a question of title, the parties would have to choose between the expense of providing themselves with duplicate deeds, or of having recourse to the assistance of the registrar. This is an objection which applies with peculiar force throughout the provinces, and it would probably render it necessary for the registrar to have a special staff of travelling clerks, for the purpose of producing evidence, in all parts of the country. For these and other reasons the Committee are strongly of opinion that the measure, if adopted at all, ought, in the first

¹ We understand that the reduction amounts to upwards of 19,000*l.* a year.—*Ed.*

instance, to be so for a single district; and perhaps the county of Middlesex, as having already a system of registration in operation, would be the most convenient."

VALIDITY OF WARRANTS OF ATTORNEY.

To the Editor of the Legal Observer.

SIR,—In the case of *Acravan and another (assignees) v. Hernaman*, (reported in the *Law Times* of the 17th May last,) it was held by the Court of Queen's Bench, that "a warrant of attorney, filed under the 12 & 13 Vict. c. 106, s. 136, without an affidavit of the time of its execution, is null and void as against creditors, and any judgment signed upon it is a nullity, the affidavit being an essential part of that which the stat. requires to be filed."

Will any of your readers do me the favour to say whether this decision affects judgments which are signed forthwith on a warrant of attorney where the warrant is not filed under the statute, but (if I may express myself, at Common Law,) without an affidavit of the time of the execution being filed at the same time.

For many years it has been the practice, I am informed, of the Queen's Bench Office, to dispense with the filing "the affidavit," where the warrant is acted on and the judgment signed directly. The real object of the statute undoubtedly was, to prevent secret warrants being obtained and afterwards acted on;—but in the case of a judgment entered up immediately, there is nothing secret in it. The case is analogous to that of a judge's order where, if it be for immediate execution, judgment is entered, and the order not filed, but if the execution be delayed, the case is different. In the opinion, however, of several members of one of the provincial law societies, among whom the point was discussed, such judgments signed on warrants of attorney, immediately, where no affidavit is put on the file, are mere nullities against creditors, in case of an adjudication in bankruptcy; for they contend, in the words of Mr. Justice Patteson,—"the filing of a warrant of attorney without an affidavit is the same thing as not filing it at all, for the affidavit is of the utmost importance, as by it the creditors are enabled to determine whether the warrant of attorney be really filed within 21 days of its execution!"

As many judgments may be found by the above decision to be invalid, it is of great importance that the position of parties should be clearly understood, and if practicable a remedy be sought to cure a state of things produced by a mere accident.

R. D.

DISPUTED DECISION.

To the Editor of the Legal Observer.

Phillips v. Pickford. 42 Leg. Obs. p. 126.

SIR,—Will you allow me, as the plaintiff's solicitor in this cause, present when the judgment of the Court of Common Pleas was delivered, to state that the judgment did not quite justify the inference raised by the marginal note—"Protection under 7 & 8 Vict. c. 96, operates in bar of action," in respect of debts named in the schedule? The Court expressly guarded itself from giving any decision on that point, though it intimated a concurrence in the judgment of the Exchequer in *Platel v. Bevil*.

The defendant had leave to amend his plea, and plead that the debt sued for was scheduled in order that the point might be argued and judicially considered, but he did not do so, and the plaintiff signed judgment.

At present there is no judgment of the Common Pleas or of the Queen's Bench confirming the Exchequer judgment in *Platel v. Bevil*; which it is difficult to believe can be sound law; for how can sec. 10 of 5 & 6 Vict. c. 116, which makes the protection operate as a bar to all actions, be consistent with sec. 22 of 7 & 8 Vict. c. 96, which makes the protection operate as a protection of the person against scheduled debts? And if inconsistent, it is repealed by sect. 74 of the latter act. Sect. 10 of the first act is consistent with the objects of that act, which vested the insolvent's future property in his assignee; hence it would have been useless cruelty to have left him still open to the claims of his creditors: but the second act, which (sect. 73) gives to the insolvent his future property, consistently left him open to the claims of his creditors—as to such property only, with his person protected. It is quite inconceivable how a protection which is expressly limited to the person of the insolvent can, by any logic, be made to extend to his property by virtue of a clause in a former act, wholly inconsistent therewith, and which is therefore expressly repealed thereby. I believe the decision in *Toomer v. Giegell* was much sounder law, common sense, and justice, than that in *Platel v. Bevil*, by which it was overruled. I trust occasion may shortly arise for the other Courts to revive the doctrine of the former; for the amount of mischief wrought to creditors by these Protection Acts is inconceivable by persons so ignorant of the common commercial affairs of the country as the law-makers usually are. Nothing but this ignorance could cause them to infer from the compulsory uses of the County Courts, that they are popular: for it is a source of universal complaint among commercial men, that, however useful the Courts may be for settling disputed claims, and so avoiding expensive actions at the assizes, yet that for the every day purpose of recovery of undisputed debts they are productive of infinite delay, expense, harass, and waste of valuable time.

G. J.

Birmingham, 16th June 1851.

SUGGESTED IMPROVEMENTS IN COMMON LAW PRACTICE.

SIR,—If the Common Law Commission is so long meditating on their proposed changes, would it not be a most convenient time during the coming vacation to weed the Common Law garden by something like such a rule as the following:—

"That from and after the day of Nov. 1851, it shall not be necessary for any plaintiff to give or enter any rule to plead, nor give or serve any demand of a plea, the delivery or filing the declaration in any action, being considered equivalent to any such demand.

"That from and after, &c., it shall not be necessary for any defendant to draw up and serve any rule to plead several matters. The order of the judge allowing such pleas to be pleaded to be considered of sufficient authority for that purpose, and a copy of such order shall be served upon the plaintiff's attorney in lieu of such rule."

I have troubled you with the above as I believe the rules themselves have long since been acknowledged as useless appendages to an action. E'C.

BARRISTERS CALLED.

Trinity Term, 1851.

LINCOLN'S INN.

June 12.

Thomas Aurelius Attwood, Esq.
Thomas Halhed Fischer, Esq.
Thomas Ramshay Smyth Temple, Esq., M.A.
John Earley Cook, Esq., M.A.
Robert Woodhouse, Esq., M.A.
William Spurway, Esq., M.A.
Pryce Athawes Major, Esq., M.A.
William Weston, Esq., M.A.
William Richard Fisher, Esq.

INNER TEMPLE.

Thomas Lett Wood, Esq., M.A.
Octavian Baxter Cameron Harrison, Esq., M.A.

Homeraham Cox, Esq.
George John Palmer, Esq., M.A.
Edward Stillingfleet Cayley, Esq.
Harry Bodkin Poland, Esq.
James Mellor Smaethurat, Esq., B.A.
William Dowling, Esq.

June 17.

Edward Pakenham Alderson, Esq., B.A.
George Slater, Esq., B.A.
Robert John Sandiford Farrar, Esq.
William Gill, Esq.

MIDDLE TEMPLE.

May 31.

John Richard Quinn, Esq.

Thomas West, Esq.
Francis Boulkes, Esq.
James Philip Doyle, Esq.
William Lewers, Esq.

June 14.

Louis Antoine Alfred König, Esq.
William Hemings, Esq.

GRAY'S INN.

May 28.

Edward Paul Page, Esq.

June 16.

Jackson Gillbanks, Esq., LL.B.

NOTES OF THE WEEK.

PRINCIPAL LAW BILLS BEFORE PARLIAMENT.

THE Law Bills in Parliament, which are peculiarly interesting to the profession, are in the following stages:—

1. The Conveyancing Bills.

Registration of Assurances.—2nd reading on the 11th inst. in the Commons.

The Copyhold Enfranchisement Bills are in Select Committee.

2. Equity Bills.

Court of Chancery and Privy Council Appeals.—Amendments of Committee to be considered in the Commons.

Masters' Jurisdiction in Equity.—In Committee in the Lords.

The Charitable Trusts Bill.—In Select Committee in the Lords.

3. Common Law Bills.

Law of Evidence Amendment.

Arrest of Absconding Debtors.

Both passed the Lords, and to be read a 2nd time in the Commons on 9th July.

4. County Courts' Extension.

No. 1, Facilitating proceedings in Chancery and increasing the number of Judges and amount of Salaries.—Re-committed for 8 July, in the Commons.

No. 2, Bankruptcy Jurisdiction.—Amendments to be considered in the Lords.

No. 3, Equitable Jurisdiction.—For 2nd reading in the Lords.

5. Law of Attorneys.

Repeal of Certificate Duty.—Motion for leave to bring in the bill 8th July.

6. Criminal Law.

Administration of Justice.—In Select Committee in the Commons.

Expenses of Prosecutions.—Re-committed in the Lords.

ROYAL WARRANTS, 3 July.

Stamp Duties Continuance (Ireland).

Compound Householders.

Court of Chancery (Ireland)

Process of Practice (Ireland).

Prevention of Offences.

NEW MEMBERS OF PARLIAMENT.

George Treweekes *Scobell*, Esq., for Bath, in the room of Lord Ashley, now Earl of Shaftesbury, called up to the House of Peers.

David *Salomons*, Esq., for Greenwich, in the room of Edward George Barnard, Esq., deceased.

LAW APPOINTMENTS.

The Queen has been pleased to grant the Office of Solicitor-General for Scotland to *George Deas*, Esq., Advocate, in the room of John Cowan, Esq., appointed a Lord of Session.—From the *London Gazette* of July 1.

The Queen has also been pleased to appoint *Thomas Mackenzie*, Esq., Advocate, to be Sheriff of the Shires or Sheriffdom of Ross

and Cromarty, in the room of *George Deas*, Esq., Advocate.—From the *London Gazette* of July 1.

NEW QUEEN'S COUNSEL.

The following are the names of the new Queen's Counsel:—

Northern Circuit.—Mr. Warren; Mr. Atherton; Mr. Ingham; Mr. H. Hill.

Oxford.—Mr. Phillimore.

Home.—Mr. Bramwell.

Western.—Mr. Slade.

The following gentlemen of the Equity Bar have also been promoted to the rank of Queen's Counsel:—

Mr. Willcock; Mr. Chandless; Mr. Follett; Mr. Campbell; Mr. Daniel; Mr. Glaase; Mr. Craig; Mr. Headlam; Mr. Baily.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Kekewich and others v. Marker. May 3, June 10, 1851.

INJUNCTION. — CUTTING TIMBER. — TRUSTEES FOR TERM OF YEARS. — TENANT FOR LIFE WITHOUT IMPEACHMENT OF WASTE.

Under a will, trustees of an estate were appointed for a term of years to raise three sums of money, and they were empowered to cut and sell whatever timber they might think fit on the property, except ornamental timber, or to mortgage or sell any portion of the estate, except the mansion-house, and in the meantime and subject to the trusts to the use of certain persons successively for life, without impeachment of waste: Held, on appeal from the Vice-Chancellor Lord Cranworth, that the tenant for life was not entitled to cut the timber for his own benefit, and an injunction was granted on the application of the trustees to restrain such proceeding.

THIS was an appeal from an order of the Vice-Chancellor Lord Cranworth refusing an injunction to restrain the defendant from cutting timber on certain estates near Combe in Devonshire. It appeared that, under the will of Mrs. Margaret Marker, the plaintiffs were appointed trustees of a term of 1000 years to raise three several sums of 10,000*l.* out of the estate, and were empowered for that purpose to cut and sell whatever timber they might think fit, except ornamental timber, or to demise, mortgage, or sell the estate or any portion thereof, except the mansion-house, and subject to such trusts, the estate was limited to the use of certain persons successively for life, without impeachment of waste. The defendant, who was the first tenant for life in possession, being about to cut down and sell certain timber, the trustees had applied for

this injunction, or for payment of the proceeds into Court.

Rolt and Fooks in support of the appeal; *Bethell and Giffard* contra.

The Lord Chancellor, after taking time to consider, said, that one of the conditions, to which the tenancy for life of the respondent was subject, was, that the trustees should have the power of raising certain legacies out of the estate either by mortgage or cutting the timber, and the interest of the tenant for life was subject thereto, and he had therefore no right to interfere with the discretion of the trustees in electing to fell the timber for the purposes of the trusts. The appeal would be allowed and the injunction granted.

June 25.—*Robinson v. Geldart and others*—Cur. ad. vult.

— 25, 26. — *Salmon v. Dean* — Appeal allowed from late Vice-Chancellor of England.

— 26.—*Visian v. Cochrane*—Part heard.

Rolls' Court.

Browne v. Cross. June 7, 9, 1851.

NON-CONVERSION OF TESTATOR'S PERSONAL ESTATE. — BREACH OF TRUST. — LACHES IN FILING BILL.

Where a bill was filed in July, 1849, complaining of a breach of trust by reason of the non-conversion of certain canal shares and turnpike securities forming part of the personal estate of a testator who died in August, 1796, it was dismissed with costs on the ground of long acquiescence and laches.

THIS bill was filed in June, 1849, for the purpose of obtaining a declaration that the non-conversion of certain canal shares and turnpike road securities, (part of the personal estate of Walter Browne, of Bradford, Wilts, who died in August, 1796,) and investment of the proceeds thereof otherwise than in consols

was a breach of trust on the part of the trustees; and for a sale of the shares; and that their estates were jointly and severally bound to make good the deficiency occasioned thereby to the plaintiffs who claimed to be entitled under the will.

Lloyd and Giffard for the plaintiffs; R. Palmer and Elderton, for the defendants, were not called on.

The Master of the Rolls said, that the plaintiffs were not entitled to the relief prayed, after the lapse of time since the testator's death and the long acquiescence by the parties in the breach of trust, and dismissed the bill with costs.

June 25.—*Alfrey v. Alfrey*—Judgment on exceptions to Master's report for impertinence.

—25.—*Barley v. Middleton*—Cur. ad. vult.

—26.—*Zulueta v. Vinet*—Order discharged for injunction obtained on petition to stay proceedings at law.

—26.—*Bentley v. Mackay*—Exceptions overruled to Master's report.

—26.—*Grace v. Garden*—Stand over.

—27, 28.—*Lees v. La Forest and others*—Judgment for the plaintiffs with costs.

—30.—*Hanbury v. Hussey*—Decree for partition.

July 1.—*Johnson v. Thomas*—Decree for account.

Vice-Chancellor Knight Bruce.

Esarte Smith, in re Coates; Valpy and others, respondents. June 11, 1851.

ALLOWANCE OF COSTS OF PROCEEDINGS ON BEHALF OF BANKRUPT BEFORE ADJUDICATION.—JURISDICTION OF COMMISSIONER.

A petition was dismissed with costs for an order of Court for certain costs which had been incurred on behalf of the bankrupt, relative to a proposition made to the creditors through the petitioner, but which had not been acceded to, and the debtor was adjudged a bankrupt, and another party appointed solicitor by the official assignee,—on the ground that the Commissioner had jurisdiction in the matter.

THIS was a petition for an order for certain costs which had been incurred in the proceedings on a proposition made by the petitioner on behalf of this bankrupt to the creditors, but which not having been accepted adjudication passed, and another party had been appointed solicitor under the fiat, by the official assignee.

Bacon and C. C. Cooper, in support; Swanson and Selwyn, for the official assignee, contra, on the ground that the matter was one for the consideration of the Commissioner, if any costs were payable, none having been incurred under the bankruptcy or since the adjudication.

Russell, for the solicitor to the fiat.

The Vice-Chancellor said, that he had no jurisdiction in the matter, and the petition must be dismissed with costs.

June 25.—*Attorney-General v. Corporation of Boston*—Master's report for charity scheme confirmed—Costs of defendants to be paid as between attorney and client, with consent of Attorney-General.

—25.—*Esarte Brown, in re Brown*—On appeal from Mr. Commissioner Goulburn, order for second-class certificate—Costs of assignees to come out of estate.

—26.—*Attorney-General v. Birmingham and Oxford Junction Railway Company and others*—Demurrers to information allowed.

—26.—*Harby v. East and West India Docks and Birmingham Junction Railway Company*—Motion refused to discharge order, but declaration, for the purpose of presenting appeal.

—28.—*Matthews v. Pincombe*—Stand over for defendant to elect whether claim filed without leave to be dismissed without costs, or as now filed with leave, the plaintiff paying the costs of the motion.

July 1.—*Doyle v. Collins*—Stand over.

Vice-Chancellor Lord Cranworth.

Fletcher v. Moore. June 6, 1851.

APPORTIONMENT ACT.—WILL MADE BEFORE PASSING OF.—RENTS NOT APPORTIONABLE.

Under her father's will, made before the passing of the 4 & 5 W. 4, c. 22, the Apportionment Act, A. was entitled to certain property on her attaining 21, or marriage, and in the meantime to have the rents applied for her maintenance. She married three days before the half-yearly day of payment, held, that she was entitled to the rents for the whole half-year.

By his will, made before the passing of the Apportionment Act, (4 & 5 W. 4, c. 22,) the testator, Mr. Moore, gave certain property to his daughter, Alice, to vest on her attaining 21, or marrying, and directed that in the meantime the rents should be applied for her maintenance. A question now arose whether upon her marriage which happened three days before the half-yearly day of payment, she was entitled to the half-year's rent.

Rolt, Stuart, Craig, Prior, Selwyn, and Follett appeared for the several parties.

The Vice-Chancellor held, that as the will was made before the passing of the 4 & 5 W. 4, c. 22, the testator's daughter was entitled to the rents; but that, if the will had been made since the act, the case would have been different.

Monro v. Procter. June 10, 1851.

PURCHASE-MONEY OF COMMON LANDS TAKEN BY RAILWAY.—REFERENCE AS TO PARTIES ENTITLED TO RIGHTS OF COMMON.

Under the 17 Geo. 3, c. 17, under which Baffield Chase was inclosed, part of Monkton Hadley Common was vested in the church.

wardens of the parish in trust for the owners and proprietors of freehold and copyhold lands entitled to a right of common. A railway company having taken a portion of the common for the purposes of their railway, and paid the purchase-money into Court: held, that the Court had not jurisdiction under the 8 Vict. c. 18, s. 107, to direct the money to be laid out for draining and improving the common, but a reference was directed to ascertain the parties entitled to commonable rights when the 17 Geo. 3, c. 17, passed, and for the money to be apportioned among such parties.

A sum of 1,400l. had been paid into Court by a railway company under the 8 Vict. c. 18 for the purchase of part of Monken Hadley Common, which had been taken under the provisions of their act for the purposes of the railway. It appeared that under the 17 Geo. 3, c. 17, by which Enfield Chase was enclosed, it was provided that part of the common at Monken Hadley, in Middlesex, should "from and after the passing of this act, become and from thenceforth and remain vested in the churchwardens of the said parish of Monken Hadley for the time being, and their successors for ever, in trust for, and for the sole benefit of, the owners and proprietors of freehold and copyhold messuages, lands, and tenements, within the said parish of Monken Hadley, their heirs and assigns, and their lessees, tenants, and under-tenants for the time being, intitled to a right of common, or other rights, within the said Chase, according to their several estates and interests therein."

A question now arose whether, under the 8 Vict. c. 18, s. 107, the Court had power to direct the purchase-money to be laid out for draining and otherwise improving the common, or whether it should not be paid over to the owners and occupiers of land who had such commonable rights when the 17 Geo. 3 passed.

J. Parker and Catrell submitted the money should be laid out as the expense of ascertaining the parties entitled would not be necessary, and the expense would be saved.

K. Parker and Hardy, for the churchwardens of Monken Hadley; Pearson, for other parties.

The Vice-Chancellor said, that he had no power to direct the money to be paid other than under the 17 Geo. 3, and directed a reference to the Master to ascertain the parties entitled to commonable rights when the act passed, and the money to be apportioned among such parties.

June 25.—Allen v. Jones—Injunction dissolved to stay action of ejectment.

—26.—Preston v. Liverpool, Manchester, and Newcastle-upon-Tyne Junction Railway Company—Demurrer to bill overruled, with leave to proceed at law.

—27.—In re Chépton, Forest of Dean, and Gloucester Junction Railway Company—Held, that motion to discharge order for winding-up

need not be advertised seven days previously to hearing under the Winding-up Act, 1849.

—28.—Attorney-General v. Robinson—Order on petition for appointment of new trustees.

—30.—Ryegton v. Earl Brownlow—Part heard.

Vice-Chancellor Turner.

June 24, 25, 28, July 1.—Manchester, Sheffield, and Lincolnshire Railway Company v. Great Northern Railway Company—Injunction granted.

—26, 27, 28, 30, July 1.—Beeson v. King—Part heard.

Court at Queen's Bench.

Coglan v. Dixon and others. June 5, 1851.

COUNTY COURTS' EXTENSION ACT.—VERDICT FOR 5L.—COSTS.

In an action in trespass for breaking and entering the plaintiff's house and taking his fixtures and goods, the plaintiff obtained a verdict, with 5l. damages, on the issue joined on a plea of "not guilty" as to the breaking and entering, but the jury found on another issue that the goods taken did not belong to the plaintiff. The judge refused to certify on the trial on the ground the action was vexatious. A rule nisi was refused under the 13 & 14 Vict. c. 61, for the allowance to the plaintiff of his costs.

This was a motion for a rule nisi under the 13 & 14 Vict. c. 61, for the allowance to the plaintiff of his costs in this action, which was in trespass for breaking and entering his house and taking away his fixtures and goods; to which the defendants pleaded, as to the breaking and entering, "not guilty," and as to the fixtures and goods and chattels, that they were not the plaintiff's property, and that the acts complained of had been committed with his leave and license. On the trial, the plaintiff having obtained a verdict on the issue joined on the plea of not guilty with 5l. damages; and Lord Campbell, C. J., who presided, having refused to certify, the present motion was made.

Hawkins, in support, referred to the 13 & 14 Vict. c. 61, s. 12, "which enacts, that 'if the plaintiff shall in any such action as aforesaid, recover a less sum than the sum in that behalf hereinbefore mentioned, by verdict, and the judge or other presiding officer before whom such verdict shall be obtained shall certify on the back of the record that it appeared to him at the trial that the cause of action was one for which a plaintiff could not have been entered in any such County Court as aforesaid, or that it appeared to him at the trial that there was a sufficient reason for bringing the said action in the Court in which the said action was brought, the plaintiff in such case shall have the same judgment to recover his costs that he would have had if this act had not been passed.' And to sect. 13 providing, 'that if in any

such action, whether there be a verdict in such action or not, the plaintiff shall make it appear to the satisfaction of the Court in which such action was brought, or to the satisfaction of a judge at chambers upon summons, that the said action was brought for a cause in which concurrent jurisdiction is given to the Superior Courts" by the 9 & 10 Vict. c. 95, s. 128, "or for which no plaint could have been entered in any such County Court, or that the said cause was removed from a County Court by certiorari, then and in any of such cases the Court in which the said action is brought, or the said judge at chambers, may thereupon, by rule or order, direct that the plaintiff shall recover his costs."

The Court said, that under the 13th section, the order for the plaintiff to recover his costs was a matter of discretion, and as the present was a vexatious action, and the jury had found that the goods did not belong to the plaintiff, although, perhaps, the entry was not strictly justifiable, the rule must be refused.

Regina v. Governors and Guardians of St. Mary, Newington. June 9, 1851.

ELECTION OF GOVERNORS AND DIRECTORS OF PARISH.—MANDAMUS.—QUO WARRANTO.

At an election under the 54 Geo. 3, c. cxiii., which regulates the affairs of the parish of St. Mary, Newington, certain persons were declared to be elected governors and directors of the parish for the ensuing year, but it was alleged that their majorities were obtained by a number of votes of occupiers whose rates had been paid by the landlords and which were inadmissible: A rule was discharged, with costs, for a mandamus to hold a vestry for the election of governors and directors of the parish, on the ground that it was not a case of there being no election whatever, or where it had turned out a nullity.

Semble, the proceeding must be by quo warranto and not mandamus.

THIS was a rule nisi for a mandamus on the defendants to summon a vestry under their local act (54 Geo. 3, c. cxiii) for the purpose of electing churchwardens, and presenting the names of eight substantial housekeepers from whom the justices were to select four overseers, and to elect the governors and guardians of the above parish for the ensuing year.

Sir Theobald and Lush showed cause on the ground that there had been an election on the day appointed under the local act, and that the proceeding should have been by *quo warranto*.

D. D. Keane and Pashley, in support, contended that as the persons who had been elected had obtained their majorities by votes of occupiers whose rates were paid by the landlords, the election was a nullity, and as there was only one day under the act for the election a mandamus was necessary to enable a new one to take place.

The Court said, that in the present case

there had been no election, or one which turned out a nullity, a mandamus could have been ordered, the day required by the local act not being essential but merely directory: *Rees v. Mayor of Norwich*, 1 B. & Ad. 310. But here the ground was, that improper votes had been received, and that those who were returned were not, in fact, duly elected, and the rule must therefore be discharged with costs.

Court of Common Pleas.

Dunkley v. Ferris. June 7, 1851.

ATTORNEY'S LIABILITY FOR HONESTY OF HIS CLERKS.—COSTS OF SETTING ASIDE FORGED WRIT OF SUMMONS.

It appeared, upon a reference to the Master to inquire into and report upon the facts, that a clerk of the plaintiff's attorney in an action for false imprisonment had forged the writ to the writ of summons; and a rule had been obtained to set it aside and all subsequent proceedings, held, that although the Master entirely exculpated the attorney from blame in the matter, he was responsible for the honesty of his clerk, and must therefore pay the costs occasioned by the clerk's dishonesty.

IN this case, a rule nisi had been obtained on behalf of the defendant, to set aside with costs the service of the writ of summons and all subsequent proceedings, on the ground that the writ was a forgery, and that no *precipue* had been filed.

On May 13, *Byles, S. L.*, appeared to show cause, and it appeared that the plaintiff's attorney, Mr. Lewis, of Essex Street, had directed one of his clerks, named Down, to issue the writ in question, in an action brought by a Miss Dunkley, against the defendant, for false imprisonment, and that the writ had been accordingly, as was supposed, duly obtained. There being, however, no *precipue* filed, and the clerk at the writ office denying that he had ever issued the writ, a reference was directed to the Master to inquire and report, the rule being enlarged for that purpose.

Master *Ray* now read his report, from which it appeared that a fraud and forgery had been committed by Down, who had absented himself since the order of reference, in order to appropriate the fee. The Master said, that the plaintiff's attorney had afforded every facility on the inquiry, and was free from all blame and knowledge of his clerk's misconduct.

Byles, S. L., for Mr. Lewis, said, that he should not resist the motion to make the rule absolute, but submitted, that as his client was entirely exculpated by the report, he should not be compelled to pay the costs.

Fild, for the defendant.

The Court said, that the attorney must be considered as responsible civilly, though of course not criminally, for the honesty of his clerk, and must pay the costs, as the defendant could not be called on to pay any part of them, and the rule was made absolute accordingly, with costs.

Court of Chancery.

Smith v. Howell. June 5, 1851.

ACTION ON COVENANT IN LEASE OF INDEMNITY.—COSTS OF DEFENDING, RECOVERY OF AGAINST SUBSEQUENT ASSIGNEE OF COVENANT.

G., the lessee for 21 years of certain leasehold premises, assigned his interest to S., the plaintiff, who covenanted that he would at all times perform and observe the covenant of G.'s lease, and would effectually indemnify G. and save him harmless from all losses, damages, and expenses in respect thereof, and S. afterwards assigned to the defendant, taking a similar covenant of indemnity from him. The rent being in arrear and the premises out of repair, B., the assignee of the original lessors, sued G. for the rent and repairs, and obtained judgment by default, and G. brought an action against the plaintiff for the amount so recovered together with his own costs. The plaintiff, upon the defendant not coming in to defend on being called on, defended the action, and upon G. obtaining judgment, sued the defendant for the amount recovered, together with his own costs: Held, that he was not entitled to recover his costs of defending the action, but that the circumstance of his not having paid G. did not affect his right to recover.

THIS was a rule nisi to reduce to a nominal amount the damages obtained on the trial of this action, which was brought on the covenant of the defendant, the assignee of a lease, to indemnify the plaintiff, the immediate assignor, from the original covenants in the lease. It appeared that on 4th June, 1836, a Mr. Goodered had obtained a demise for 21 years of certain leasehold premises at Fulham, with the usual covenants to repair, &c., and subject to a rent of 126l., and subsequently assigned the lease to the plaintiff, who covenanted to perform and observe all the covenants of the former lease, and effectually to indemnify Mr. Goodered and save him harmless from all losses, damages, and expenses in respect thereof. The plaintiff then assigned his interest to the defendant, who entered into a similar covenant. The rent being in arrear and the premises out of repair, Mr. Bridge, who was the assignee of the original lessor, brought an action against Mr. Goodered and obtained a verdict on a judgment by default for the amount of rent, dilapidations, and costs, and Mr. Goodered then sued the plaintiff on his covenant for the amount of the judgment in the action brought against him together with his costs, and the plaintiff, upon the defendant not coming in to defend when called on, defended it, and upon Mr. Goodered obtaining a verdict for the same, and before he had paid the amount, commenced this action against the defendant for the sum so recovered, together with his own costs of suit, and obtained a verdict for 472l. 12s.

Hoggins and Field showed cause against the rule; Bramwell, in support, on the ground that the plaintiff could not recover on the covenant until he himself had paid the amount recovered by Goodered, and that he could not recover the costs of either action of *Bridge v. Goodered* or *Goodered v. Smith*, as the demand should have been paid into Court without incurring any expense.

The Court said, that the plaintiff was not entitled to the costs of defending the action brought against him by Goodered as he should have suffered judgment to go by default, leaving the damages to be assessed by a jury, but that the costs in the action of *Bridge v. Goodered* were recoverable. The objection that the plaintiff had not actually paid the money before the action was brought could not be sustained, as the plaintiff was entitled to be indemnified against the liability he had necessarily incurred. The rule would, therefore, be made absolute to reduce the verdict to 360l.

Blair v. Jones. June 10, 1851.

ARBITRATION AND AWARD.—FIRST AWARD RENDERED ABORTIVE BY INVALID EXECUTION.—COSTS OF.

On a reference of a cause and all matters in dispute to two arbitrators and an umpire, the plaintiff took up the award and paid the fees of the arbitrators and umpire. The award was subsequently set aside on the ground that it had not been executed by the arbitrators and umpire in the presence of each other, and the matter was referred back, and the plaintiff again took up the second award, which was rendered necessary by the parties going into additional evidence, and paid the costs thereof: Held, that so much of the costs of the award as was rendered useless by the defective execution should be borne equally by the parties, and a rule was made absolute for the review of the taxation of the Master who had allowed the whole sums paid by the plaintiff.

THIS was a rule nisi for a reference back to the Master to be reviewed of the taxation of the costs in this case. It appeared that an action had been brought concerning the right to the enjoyment of a watercourse, and was referred, together with all matters in difference between the parties, to two arbitrators and an umpire, and that the plaintiff had taken up the award made and paid the costs thereof. The award was subsequently set aside on the ground that the arbitrators and umpire had not signed it in the presence of each other, and the matter was referred back. Upon the second reference, the parties tendered additional witnesses, and several meetings were held, and the plaintiff again took up the award and paid the fees of the arbitrators and umpire. The Master having on the taxation allowed both the sums paid by the plaintiff, this rule had been obtained on the ground that the first award was a nullity, and no benefit had been derived therefrom.

Mellish showed cause, and contended that both the hearings should be looked on as one, and that the evidence received on the former reference served to guide in making the award, and that if the parties had not desired a re-hearing it would only have been necessary to re-execute the former award.

Spinks, in support, was not called on.

The Court said, that although in ordinary cases it was unnecessary to inquire into the charges of arbitrations, it was necessary in the present case in order to inquire what portion of the first payment was thrown away in consequence of the defective execution of the first award, such as the stamp, the charge for the preparation, and the meeting, if any, for its execution, and which should be borne equally by the plaintiff and the defendant. The rule was accordingly made absolute for a reference back to the Master.

June 25.—*Law v. Rawson*—Rule discharged to set aside verdict for defendant and for new trial.

— 25.—*Newton v. Vaucher*—Judgment for plaintiff and rule to set aside verdict discharged.

— 25, 27.—*Coe, by her next friend, v. Platt and others*—Rule for new trial discharged on the ground of misdirection, but arrest of judgment for plaintiff on the ground of declaration disclosing no good cause of action.

— 27.—*Doe v. Hellyer*—Rule absolute to set aside verdict for lessor of the plaintiff and for new trial.

— 28.—*Abbott v. Bacon*—Rule absolute to enter verdict for plaintiff for one farthing.

— 30.—*Hart v. Buxendale*—Rule absolute to enter verdict for plaintiff.

July 1.—*Stockton and Darlington Railway Company v. Fox*—Rule discharged to enter verdict for plaintiffs, or for judgment *non obstante veredicto*.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF ATTORNEYS AND SOLICITORS.

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lancy, p. 147.

Law of Costs, p. 163.]

ABSTRACTS, CHARGE FOR.

See *Taxation*, 7.

AGENCY.

1. *Agreement between solicitors in cause.*—*Taxation of separate bill of costs as joint bill.*—*A.*, *B.*, and *C.*, were defendants in the cause, against whom a bill was dismissed, with costs. *B.* and *C.* acted as the solicitors of *A.*, and appointed *D.* to act as their own solicitor in the same cause. After the retainer, an agreement was entered into between *B.* and *D.*, whereby *D.* agreed to allow *B.* and *C.* a portion of the profits of his bill of costs: *Held*, that the agreement constituted *D.*, in substance, an agent for *B.* and *C.*, and that the separate bills of costs of *B.*, and of *C.* and *D.*, were properly taxed as a joint bill, and that all such costs as would not have been allowed in a case of agency, were properly disallowed. *Deere v. Robinson*, 7 Hare, 283.

2. *Taxing Master.*—*Jurisdiction.*—If in the judgment of the Taxing Master, there be ground to suspect that an arrangement has been made between solicitors in the cause, by which a portion of the profits of the bill of costs of one is to be paid to another, it is in the discretion of the Taxing Master to require

affidavits from the solicitors as evidence of the facts, and, if such an arrangement should appear, the bills of costs ought to be taxed as in case of agency. *Deere v. Robinson*, 7 Hare, 283.

ARTICLED CLERK.

1. *Return of premium out of assets of deceased solicitor.*—An attorney, to whom a clerk was articulated, died before the articles expired: *Held*, that the Court had jurisdiction to order part of the premium paid to the attorney to be repaid out of his assets; and that, although he had covenanted to instruct the clerk, "or cause him to be instructed," and his surviving partner had agreed with his executors to take the clerk for the remainder of his articles. *Hirst v. Tolson*, 2 H. & T. 359; 2 M'N. & G. 134.

Cases cited in the judgment: *Newton v. Rowse*, 1 Vern. 460; *Hale v. Webb*, 2 Bro. C. C. 78.

2. *Jurisdiction.*—*Premium.*—An attorney, to whom a clerk was articulated, died before the articles expired.

Held, that the Court had jurisdiction to order part of the premium paid to the attorney to be repaid out of his assets. *Hirst v. Tolson*, 16 Sim. 620.

AUTHORITY.

Selection of next friend for married woman.—A married woman, entitled to separate property, authorised a solicitor to take proceedings respecting it. The solicitor filed a bill on her behalf, in which she and her infant child sued by one next friend, but he did not consult her as to the selection of the next friend: *Held*, that she was not bound by the proceedings, and a motion to strike out her name was acceded to, without costs. *Gambes v. Atlee*, 2 De G. & S. 745.

CLIENT, ACTING AGAINST.

Change of solicitor.—A bill was filed by the residuary legatees under a will, against the executors, of whom one was also beneficially interested as a legatee, and had undertaken the sole management of its affairs. The bill charged particular acts of mismanagement, and the appropriation by the managing executor to his own purposes of part of the trust funds. The solicitor for the plaintiffs, having been for several years the friend and solicitor of the managing executor, had become well acquainted with the circumstances of the trust; he had been engaged in recovering money from a debtor to the estate, and had been consulted by the managing executor when one of the residuary legatees, the present plaintiff, had applied for the executorship accounts, which had been delivered under the solicitor's advice. The solicitor's bill for the matters was made out against the managing executor, not as executor, but personally. The bill was taxed, and an action brought for the amount which was paid, and the character of solicitor and client thus ceased in 1847. A motion by the managing executor, the former client, for an injunction to restrain the solicitor from acting as the solicitor for the plaintiffs in the cause against him was dismissed. *Parratt v. Parratt*, 2 De G. & S. 258.

COMPROMISE.

Costs of suit.—*Notice.*—The solicitor of the plaintiff in a foreclosure suit, in which a decree for sale before the Master was made by consent, prosecuted the suit to the settlement of the particulars and conditions, and appointment of the day of sale, when the plaintiff and the defendant (by his solicitor) having notice of the claim of the plaintiff's solicitor for the costs of the suit, compromised the suit on the terms of paying the plaintiff a certain sum in discharge of the debt and costs, part of which was immediately paid to the plaintiff. Upon the petition of the plaintiff's solicitor, the Court ordered the costs of the plaintiff's solicitor in the suit to be taxed, and paid by the plaintiff and defendant, or one of them. *White v. Pearce*, 7 Hare, 276.

Case cited in the judgment: *Welsh v. Hole*, Dougl. 238.

DELIVERY OF DEEDS.

See Jurisdiction.

DISABILITY TO PURCHASE.

1. *Sale by annuitant.*—*Purchase by trustee or solicitor.*—An annuitant with a power of sale, sold property charged with the annuity, by auction. An objection to the title was afterwards taken, and the contract abandoned. The solicitor for the vendor afterwards took an assignment to a trustee, for himself, from the personal representative of the grantor, who did not employ any other solicitor, at the price which it brought at the auction, but without communicating the circumstances as to the title: *Held*, that such a

purchase could not be sustained. *In re Bloye's Trust*, 2 H. & T. 140; 1 M'N. & G. 438.

Case cited in the judgment: *Whitcomb v. Mineha*, 6 Mead. 91.

2. The solicitor who conducts the sale of property cannot become the purchaser without full explanation to the vendor, and informing him that he (the solicitor) is to become the purchaser. *In re Bloye's Trust*, 1 M'N. & G. 438.

Case cited in the judgment: *Woodhouse v. Meredith*, 1 J. & W. 204.

DISABILITY TO TAKE GIFT.

Mother to son, where he is her solicitor.—A son acted as his mother's solicitor, and, with her consent, lent 2,500*l.* belonging to her, with other money, upon a bond conditioned for payment to himself absolutely, of the amount thereby secured, without any declaration of trust, except a memorandum, whereby the son acknowledged that he held 2,500*l.*, and undertook to pay the interest thereof to the mother during life. The son died in his mother's lifetime, and his executors claimed the principal sum, subject to a life-interest in the mother, as a gift from her to the son: *Held*, that the relation of solicitor and client, subsisting between the son and mother, excluded the ordinary presumption in favour of the transaction being a gift, and threw the burden of proof upon the executors: and the evidence being insufficient to establish their case, the Court declared the son's executors to be merely trustees for the mother. *Garrett v. Wilkinson*, 2 De G. & S. 244.

INJUNCTION.

Injunction decreed to restrain a solicitor from communicating to a party, who was suing a former client, documents or matters of evidence which had come to the possession or knowledge of the solicitor in respect of his employment for such client, and to restrain the party suing from using in his action, or otherwise, any documents or matters of evidence which he had so obtained. *Lewis v. Smith*, 1 M'N. & G. 417.

JURISDICTION.

Delivery of deeds and documents.—An order was made at the Rolls for the delivery by a solicitor of his bill of costs, which was accordingly delivered and paid. Any subsequent application for the delivery of deeds and documents of the client, in the solicitor's possession, should be made to the Rolls, and not to any other branch of the Court. *In re Mills*, 1 De G. & S. 643.

And see *Taxation*, 9.

LIEN.

1. *Costs due to solicitor on deeds possessed jointly with his partner.*—A solicitor does not acquire a lien for costs due to himself solely, upon documents which came into the joint possession of himself and partner or partners; but he does not lose his lien for such costs upon documents which, having come into his

own possession, afterwards continued in the possession of himself and his partner or partners. *Pelly v. Wathen*, 7 Hare, 351.

2. *Deeds coming into solicitor's hands as mortgages of client's estate.*—A solicitor does not, as solicitor, acquire a lien for his costs upon the documents of his client which came into the possession of the solicitor, not in that character, but as mortgages of the client's estate. *Pelly v. Wathen*, 7 Hare, 351.

3. *On deeds and other documents.*—The lien of a solicitor on the deeds of his client is a legal right, which cannot be greater in extent than the interest of the client in the deeds, and does not enable the solicitor to retain the deeds against third parties, where the client could not, as against such third parties, give the solicitor a lien upon the property to which the deeds relate. In determining the extent of such lien, equity follows the law, and although the deeds might have come to the possession of the solicitor, without notice of a prior equitable claim, the Court gives effect as against the solicitor to each prior equitable right. *Pelly v. Wathen*, 7 Hare, 351.

4. *Master's jurisdiction under Winding-up Act.*—*Production of documents.*—Although the Winding-up Act authorizes the Master to require every person to produce documents relating to the company in his possession, without any express reservation of the rights of lien, this Court cannot interfere to destroy or injure the lien of solicitors, nor adversely order the production of documents on which they have a lien. *In re Oxford and Worcester Extension and Chester Junction Railway Company*, *Potter's case*, 1 De G. & S. 728.

5. *An order of Court.*—A solicitor for a plaintiff in a cause obtained an order, which he passed; he was then discharged by the plaintiff, and a new solicitor was appointed in his stead. The discharged solicitor refused to produce the order to be entered, on the ground that he had a lien for his costs in the same suit, and other costs. Upon motion by plaintiff, for production, that the order might be entered: *Held*, that lien cannot be allowed to intercept the completion of an order of the Court which has been passed, and the discharged solicitor was directed to produce the order for entry, upon payment of 20s. costs. *Clifford v. Turrill*, 3 De G. & S. 1.

6. *Assignment with debt due for costs.*—A solicitor's lien is a dormant security, in which it differs from a mortgage; but a solicitor may assign a debt due to him for costs, with the benefit of any lien he may have upon any documents for such costs. The claim is equally valid, whether the deeds are in the actual possession of the solicitor, or of his assignee; and such lien may pass to the solicitor's assignee, if the deeds were handed over in the solicitor's presence, and at his request to his assignee, without his actually touching them. *Bull v. Faulkner*, 1 De G. & S. 712.

7. *Partnership.*—*Joint solicitors.*—Two

of parties having projected a railway on a similar line, agreed to consolidate the project, and appointed as solicitors of the proposed company, the plaintiff and defendant, whom they had respectively consulted prior to the consolidation. The two solicitors accepted the appointment without making any definite arrangement as to the division of the business, or of the emoluments of the office, and a much larger portion of the work was done by the defendant than by the plaintiff. In a conversation between them about six months after the appointment, and before the principal part of the business was transacted, the plaintiff stated, as the result of his inquiries into the practice in like cases, that the allowance for office expenses and personal trouble in such limited partnerships between solicitors, was made by each party retaining, besides his expenses and disbursements, from 10 to 25 percent, on the amount of the net charges for the business done, and which principle he considered satisfactory; and the defendant, in reply, observed, that there could be no misunderstanding about it between honourable men. Upon a bill by the plaintiff, claiming an account and division of the profits of the business done by the company, upon the footing of an equal co-partnership, and offering to allow 25 percent, upon the work done separately, to the partner who did it,—the Court, in the circumstances, made a decree accordingly. *Webster v. Bray*, 7 Hare, 159.

2. *Railway Company.*—*Issue at law.*—Issues directed on the questions, whether the solicitors of a railway company were partners in the business done by them for the company; and, if partners, whether in equal shares. *McGregor v. Bainbrigg*, 7 Hare, 164, n.

3. *Participation in profits with second solicitor.*—The solicitor of a defendant in the cause, and who is himself a defendant in the same cause, and appears by a second solicitor, cannot be allowed more than one bill of costs, if it appears that the second solicitor has, either before or after his retainer, agreed to allow his client, the first solicitor, a portion of the profits of his costs in the cause. *Deere v. Robinson*, 7 Hare, 283.

PURCHASE, DISABILITY TO.

See *Disability*.

TAXATION.

1. *Costs of special order obtained on a misrepresentation.*—Application by residuary legatee, more than twelve months after payment, for the taxation of a solicitor's bill, against the executor, refused; notwithstanding there had been some agreement between the legatee and solicitor, and that payment had afterwards been made behind the back of the legatee.

Order for taxation, made upon affidavit of service, discharged with costs; the petition having misrepresented the case, and the real facts being found not to warrant the order. *In re Ross*, 12 Beav. 256.

2. *Costs of valuation.*—*Legacy duty.*—A pay-

ment for legacy duty made by a solicitor for his client, ought, for taxation, to be included in his cash account and not in his bill of costs, and therefore such a payment is not to enter into the computation, in considering whether a sixth is taxed off. *In re Haigh*, 12 Beav. 307.

3. *Irregularity.—Retainer of solicitor.*—An *ex parte* order for the delivery of a bill of costs discharged with costs: the allegation of the professional employment being denied by the solicitor. *In re Elridge*, 12 Beav. 387.

4. *Committal for non-delivery of bill.*—A solicitor was ordered to deliver his bill for taxation. Upon a motion to commit for the non-delivery, he swore he had no documents or memoranda from which he could make out his bill. The Court made no order on the motion. *In re Ker*, 12 Beav. 390.

6. The decision in *Robins v. Mills*, 1 Beav. 287, is inapplicable, where the merits of the cause must enter into the discussion. *Webb v. Grace*; *in re Vines*, 12 Beav. 489.

6. *After payment.—On ground of overcharge.*—Taxation of a paid bill, sought on the ground of overcharge in abstracts containing less than 10 folios refused, the practice being in uncertainty, and there being no pressure or surprise. *In re Walsh*, 12 Beav. 490.

7. *Abstracts, charge for.*—In taxation, abstracts are ordinarily passed if they contain eight folios on an average; but the strict rule is, that they should contain ten folios.

Explanatory notes of the Taxing Master as to the charge for abstracts, &c., &c. *In re Walsh*, 12 Beav. 490.

8. *Submission of four directors of company.—Personal liability.*—A bill incurred by a projected company was ordered to be taxed upon the submission of four of the directors to pay. An official manager was afterwards appointed for winding-up the company. The Court refused to restrain the solicitors from enforcing payment against the directors, the undertaking being personal. *In re Sudlow*, 12 Beav. 527.

9. *Overcharge and payment under pressure.—Jurisdiction*—Two suits, attached to the V. C. of England, were compromised; in one there was an order to dismiss on the payment of costs, and the other was stayed only. The costs of both were paid under pressure, and there were overcharges: *Held*, that the Master of the Rolls had jurisdiction to order a taxation. *In re Elmslie*, 12 Beav. 538.

10. *After payment.—Evidence of overcharge.*—A meeting was appointed to settle important matters on the 23rd of August, and the costs were to be paid by A. B. The bill of costs was delivered the evening before, and payment was then insisted on, the bill was objected to. Upon evidence of overcharge, taxation was ordered after payment. *In re Elmslie*, 12 Beav. 538.

11. *Under special circumstances, after twelve months.*—The clients of a town solicitor, on the delivery of his bill of costs, objected that it was not complete, inasmuch as it did not contain items in respect of business done by a

country solicitor, whom the clients designated as the town solicitor's agent, but whom the town solicitor claimed a right to treat as having been employed directly by the clients. More than a twelvemonth after the delivery of the bill, the clients presented a petition to have it taxed: *Held*, that the dispute as to the completeness of the bill was a special circumstance rendering it fit to direct a taxation after the lapse of twelve months. *In re Bagshaw, ex parte Huddersfield and Manchester Railway and Canal Company*, 2 De G. & S. 205.

TRUSTEE.

1. A solicitor who is a trustee, and who is made a party to a suit respecting the trust property, will only be entitled to costs out of pocket, if he acts for himself, individually, as solicitor; but the circumstance of his being a trustee will not prevent him from receiving his usual costs, where he acts as solicitor in such a suit for any of the *cestuis que trust*, or where he acts for himself and his co-trustees, or *cestuis que trust*, jointly, provided the costs are not increased by his being one of the parties for whom such joint appearance is made. *Bainbrigg v. Blair*, 8 Beav. 558, corrected. *Cradock v. Piper*, 1 H. & T. 617; 1 M'N. & G. 664.

Cases cited in the judgment: *York v. Brown*, 1 Coll. 260; *New v. Jones*, Leg. Obs. for 1833, p. 410; *Moore v. Frowd*, 3 My. & C. 50; *Carmichael v. Wilson*, 2 Moll. 557; 1 D. & C. 51; *Fraser v. Palmer*, 4 V. & C. 517.

2. *Taxing Masters' discretion.*—Under a general order to tax costs, the Taxing Master is at liberty to disallow the costs of a solicitor who is also a trustee, except costs out of pocket. *Cradock v. Piper*, 1 H. & T. 617; 1 M'N. & G. 664.

3. *Work and labour.*—A solicitor who accepts a trust under a will or settlement, is not entitled to charge for work and labour done by him as a solicitor in executing the trust. *New v. Jones*, Leg. Obs. vol. 6, p. 410; 1 H. & T. 632, n.; 1 M'N. & G. 668, n.

4. One of the trustees of a will, was a solicitor, and acted in that character for his co-trustees and some of the other parties to a suit relating to the testator's property.

Held, that his bills of costs ought to be allowed in taxing costs under orders in the suit. *Cradock v. Piper*; *Parkinson v. Same*, 17 Sim. 41.

WINDING-UP ACTS.

Master's order approving of solicitor discharged.—Where certain solicitors appeared upon the proceedings to have been appointed by the official managers, and to have been approved of by the Master, the Court permitted affidavits of what had been done to be read in explanation of the proceedings; and, it appearing that the appointment had in fact been made by one official manager only, the Court discharged the order approving of the appointment. *In re London and Manchester Direct Independent Railway Company, Bass's case*, 1 De G. & S. 722.

And see *Lien*, 4.

The Legal Observer,

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SATURDAY, JULY 12, 1851.  
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ATTORNEYS' ANNUAL CERTIFICATE DUTY.

MAJORITY IN FAVOUR OF THE REPEAL.

ONCE more the House of Commons has decided in favour of the remission of this partial, unjust, and oppressive tax upon the attorneys and solicitors of the United Kingdom. On Tuesday last, the 8th instant, in a House of 294 members, 162 voted for the bill and only 132 against it:—leaving a majority of 30 against the Government,—a larger number than on any of the divisions of last Session.

The measure was again introduced by Lord Robert Grosvenor, who from his high character and eminent rank, and as the principal representative of the Metropolitan County, had been solicited by the Profession to take charge of their case. Having been fully satisfied of the justice and propriety of the claim, his Lordship devoted his best attention to all its details,—carefully considered the objections which had been raised against it;—and, as we have seen, conducted the case in Parliament with great judgment and ability,—placing it in a position which must ensure success in the next Session.

Doubtless some will be disappointed at the further delay, but the difficulty of carrying a measure of this nature, against the will of the Government, will be readily appreciated by the members of the profession, and particularly by those who have been engaged in soliciting bills through Parliament, whether public, local, or private.

It may be proper to mention that the promoters of the repeal did not place themselves in hostility to the Government, until all means of argument and remonstrance had been exhausted. Lord Robert Grosvenor, accompanied by several members of Parliament, and by members of the Council

of the Incorporated Law Society, attended the Prime Minister, both in the last and present Session, and laid clearly before him the grounds on which the claim rested, with a view to obtain equal justice amongst the professional classes of the community, and according to the recognized principles of taxation.

Considering the dis-favour in which Lawyers are usually viewed, it was perhaps to be expected that the Chancellor of the Exchequer would not *voluntarily* prefer their relief from this tax, though evidently a tax on justice, whilst there were loud clamours for the repeal of taxes on “knowledge” and on “prudence,”—namely, the taxes on paper and on insurances, and many other subjects, which, however, are general and not partial taxes. It is remarkable that in the last Session, the Government, on some occasions, upon a single adverse decision, yielded to the majority. The extension of the County Courts was carried in a House much smaller than that on the Certificate Duty, upon *one* division only; but *four* distinct majorities were deemed insufficient to establish the opinion of Parliament against this oppressive tax!

At a very early period in the present Session, Lord R. Grosvenor gave notice of his intention to bring in the bill, and the promoters of the measure used no common exertions again to impress on their representatives in Parliament the equity of the claim, and ensure their presence when the discussion should take place. The resignation of ministers—the negotiations for a new administration—and the return to office of the same ministers—the protracted debates on papal aggression—the changes in the financial plan—and other events, with the difficulty of securing a favourable position amongst the business of the day, have hitherto delayed: *ne motion.*

Referring to the report of the debate, hereafter given; we may observe that a most important step has been gained by the renewed determination of the House of Commons in the present Session. The Chancellor of the Exchequer, indeed, whilst he opposed the motion with all his might, distinctly said, that if "both sides of the House were of opinion that this was the first tax that ought to be repealed, *he should have no more to say in opposition to it.*" Now, members on both sides of the House most unequivocally proceeded at once to record their votes, "then and there," in favour of such repeal, and we conceive, therefore, that next Session, whoever he may be, the Finance Minister will frame his budget in conformity to this decision.

The following will be found to be a full and accurate Report of the Debate :—

Lord R. Grosvenor, after presenting several petitions,¹ moved for leave to introduce a bill the same as that of last year, which he said had gone through all its stages but two, for the purpose of repealing the attorneys', solicitors', and proctors' annual certificate duty. In doing so, he said he must necessarily be brief, on account of the difficulty he experienced in knowing what to say, and when he reminded the House of the position in which the question then stood, he thought they would concur with him that he was in that predicament.

Last year, he had stated at some length the origin, nature, and operation of this tax; and in advocating its repeal, he had shown to the House that it had every vice in principle which a tax could possibly have, and that its operation was in consequence partial and oppressive. Now he had great reason to believe that the House had been satisfied with his arguments; for though, upon a fifth division, the Chancellor of the Exchequer had got a chance majority, and he was unable to proceed with his bill, yet on four successive occasions the House had affirmed the principle he advocated, —not certainly by a very large majority upon any one occasion, but upon an analysis of all the divisions, it appeared that whereas 259 had voted for the repeal of the duty, only 224 had voted against it, showing a majority of 35—a pretty considerable majority for the motion of a private individual; resisted by the whole strength of Government. He should therefore decline arguing the question any further, and pressing reasons upon the House, of the validity of which the House had declared itself satisfied.

The repeal of this tax was, in fact, virtually carried; the only question was, the time when it should take place. Some persons had

found fault with the Chancellor of the Exchequer for not having intended the repeal of the tax in his financial arrangements; and so decided an expression of opinion on the part of the House; and he (Lord Robert Grosvenor) thought such would have been the more prudent course; but he did not intend to cast any blame upon his right hon. friend for having taken a different view. As finance minister, he probably thought it necessary more severely to test the opinion of the House before he surrendered his own convictions. But he must respectfully tell his right hon. friend that, if the House should do, what he could not doubt it would upon this occasion, re-affirm its former decision, he would be pursuing a most unwise and impolitic course, if, next year, he still persevered in opposing it.

He (Lord Robert Grosvenor) had intended bringing forward this question at an earlier period of the session; but he had thought it would not be well to do so during a ministerial crisis, and subsequently the fortune of the ballot had been against him. At the present period of the session he could hardly hope to proceed much further with the measure; all he could do would be to ask permission of the House to lay it on the table, with a view to proceed with it next session. But so little did he desire to embarrass his right hon. friend in any way, that if he would only give him to understand that, next year, if the income tax were granted, and no unforeseen circumstances arose to make it impossible, he would repeal this duty, he (Lord R. Grosvenor) would be contented simply to lay the bill on the table, or even not to do so much. If he could not have that assurance from the right hon. gentleman, it would be his duty to make the motion of which he had given notice.

The motion being seconded;

The Chancellor of the Exchequer said, it was his painful duty to resist the motion. It would be far more agreeable to him if he could remit all the taxes, if he could say "yes" to all the numerous deputations who came to Downing Street asking for money in one shape or other. But, unfortunately, it was his duty to resist those applications which he did not think were founded on sound principles, or for the good of the public credit. He had already carried through the house, to its last stage, the financial proposal for the year. Some had reproached him for not allowing a sufficient margin in the course of the present year; and the hon. member for Bucks had brought forward a motion declaring that no reduction whatever of taxes ought to take place, and that no further revenue should be sacrificed. He could not suppose that the gentlemen who supported that motion could possibly agree to the motion of his noble friend. He had felt it his duty to stand by the proposal he had made to the house; it would have been exceedingly unfortunate had he withdrawn from the country the boon promised in the early part of the session; he was therefore bound to resist this motion.

¹ An account of the Petitions presented will be given in an early number, with the Division Lists.

He would put it to hon. gentlemen on his own side of the house, whether, in their opinion, this was the first tax of which they should claim the repeal. They were in favour, generally speaking, of a reduction of duties pressing on the consuming population: would any one get up and say that this was such a tax? They had been in favour of the reduction of duties on raw materials, as affording the means of employment to the people: would any one say that this was a tax interfering with the employment of the people? Hon. members on the other side had expressed their opinion that the first reduction ought to be a reduction of the income tax; but every experience they sacrificed in repealing a tax of this kind, so far prevented the possibility of the reduction they sought.

If both sides of the house were of opinion that this was the first tax that ought to be repealed, he should have no more to say in opposition to it. If, on the contrary, they thought that it ought only to take its turn with other taxes, and that there were others which had a prior claim, let them resist this motion. The noble lord did not propose the reduction in the present year: it would be unwise on his part to give any pledge as to the next. He had reserved but a very moderate surplus after repealing the window duty, about 300,000*l.*; and, at present, they knew not what claims might be made upon them for the costs of the Kaffir war. Would it, then, be wise in him to promise, or in the House, to pledge itself, to sacrifice 120,000*l.* a year in this tax, looking at the circumstances which might occur?

If, in the course of next year, there should be a considerable surplus, and the House was prepared to maintain the Income Tax as it stood, then he would take into consideration what other taxes should be reduced or modified. Until they knew what would be the probable income and expenditure for next year, it would be unwise and injudicious to pledge themselves to sacrifice 120,000*l.* The contrary policy had always been acted upon by his predecessors. Should the House now pledge itself to repeal this 120,000*l.*, it would be to that extent incapacitated next year from reducing taxes which it might be thought more necessary to get rid of. The tax complained of was not an especial burden upon the solicitors; conveyancers and other parties paid the same tax. He hoped the House would not agree to repeal this tax, either in the present year or in the next, till they saw what was their financial position, and until it was known whether the income tax was to be renewed or not.

Lord R. Grosvenor said, as his right hon. friend had confined himself merely to general assertions, and had not ventured on the hopeless task of attempting to prove the justice of this tax, he would refrain from making any reply, merely requesting the House to recollect that he did not propose to interfere with the financial arrangements this year, and asking

them to be consistent with their former decisions. The House then divided—

For the motion 162.

Against it 132—30

Leave was accordingly given to bring in the bill.

On Wednesday the bill was brought in.

COUNTY COURTS' FURTHER EXTENSION BILL.

Or the three Bills now before Parliament for extending the Jurisdiction of the County Courts, only one has yet found its way to the House of Commons, and that has been so much changed in its progress, that we doubt if the parents could recognize their own offspring. To say nothing of the changes made in the House of Lords, it appears from the printed bill, as amended by Committee, and on re-commitment, that not a single clause remains unaltered, since the bill was read a second time by the House of Commons and ordered to be printed on the 5th May last. The bill, as read a second time, contained 17 clauses, and the print of the bill now before us¹ contains 15; but of those, seven are new both in substance and form, and the eight that remain are materially modified.

The history of the changes made in this bill, since its introduction in the House of Lords at the commencement of the Sessions, affords a remarkable example of legislative versatility. When, as in this instance, the character of a measure is changed at every stage, it is extremely difficult, if not impossible, to enable those most interested to understand what is contemplated; but, as the newspaper reports afford a very inadequate idea of the changes made in the bill in Committee, and some of the members who were present at the discussion declared themselves entirely ignorant of the effect of the alterations introduced, at the hazard of describing clauses which may be struck out or again altered at the next stage, we proceed to put our readers in possession of the bill in the shape it now presents itself.

Instead of empowering the Judges of the Court of Chancery to send accounts and inquiries to the Judges of the County Courts and the Commissioners of the Court of Bankruptcy, without more, the bill, by the first section, authorizes the Chancellor to appoint those functionaries, officers of the Court of Chancery. The clause is as follows:—

¹ Printed under an Order made by the House of Commons on the 1st July, 1851.

"The Lord Chancellor may from time to time appoint such of the Judges of the County Courts, and of the Commissioners and Registrars of the Court of Bankruptcy, and of the officers of the said Courts respectively, as he shall think fit, to be officers of and assistant to the Court of Chancery, in such matters, for such purposes, and under such regulations as the Lord Chancellor, with the advice and consent of the Master of the Rolls and Vice-Chancellors, or any two of them, shall from time to time by any General Orders in that behalf direct."

By the next clause, power is given to the Chancellor, with such advice and consent as aforesaid, to make general orders and regulations for the purposes specified, *i. e.*—

1. For directing inquiries and accounts to be made by the Judges of the County Courts and Commissioners of Bankruptcy.

2. To make provision for taking evidence, filing and preserving the same.

3. For authorizing the Judges of the County Courts, Commissioners and Registrars in Bankruptcy, to take affidavits, declarations, acknowledgments, and also to take pleas, answers, &c., in matters depending in Chancery.

4. And for providing for the transmission of proceedings by post.

By sect. 4, in orders of reference under this act, accounts are to be taken and inquiries and reports made as in Equity.

By sect. 5, the Chancellor is empowered to make orders for compelling the attendance of witnesses, and for enabling witnesses in any matter in the Court of Chancery to be examined orally, in the presence of the person entrusted with such examination "by the parties, their counsel, solicitors, and agents, in the same manner as witnesses are examined at trials at Nisi Prius," or such other manner as may be prescribed by such orders.

By sects. 6 & 7, all witnesses examined orally are bound to answer the questions put to them as if examined on written interrogatories; and persons subpoenaed for such purpose are bound to attend, and subject to the ordinary penalties for perjury.

By sects. 7 & 8, the Lord Chancellor, (with such advice and consent as aforesaid,) is further empowered to make general rules for carrying the act into execution, in respect of proceedings in Chancery; and orders made under the act are to take effect as General Orders of the Court of Chancery. The following clause was introduced in Committee, and is distinguished as clause A. :—

"It shall and may be lawful for the clerks

of the said judges, for the business done by such judges and clerks respectively, by virtue of this act, in causes or matters depending in the High Court of Chancery, or before any of the judges thereof, to demand, receive, and take the several fees specified in a table thereof to be settled by the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury, and no greater sums, under such rules and regulations as the Lord Chancellor, with such consent as aforesaid, shall from time to time direct; and a table of such fees shall be put up in some conspicuous place in the County Court house and in the clerk's office; and the said clerks shall account to the County Courts' treasurer for such fees, and pay them over to the treasurer, and the treasurer shall audit such account, and deal with the fees paid over to him, in like manner as is provided with respect to the fees received under the authority of the said act."

The next clause provides, that, on petition to her Majesty, the jurisdiction of a City or Borough Court may be excluded from that of the County Court in concurrent causes, and that her Majesty in Council may award compensation to any officers of such Court appointed before the passing of this act, the same to be paid out of the Consolidated Fund.

It would seem that when the insolvent jurisdiction in country causes was transferred to the County Courts, under the 10 & 11 Vict. c. 102, no provision was made for the audit of accounts in reference to insolvents' estates. This omission is now proposed to be supplied by the following clause, which is marked D. :—

"That the treasurer of the County Court in which any insolvent's estate shall be administered, at the audits of the account of the clerk of such Court, shall also audit and examine the books and accounts of the clerk in all matters relating to such estate, and shall make a report to the judge of the Court, stating whether a dividend should be made, and the general result of such audit; and the judge shall examine the said clerk on oath, as to the correctness of such accounts, and may make such order as he may deem requisite respecting a dividend or other matter relating to such estate and accounts; and the treasurer shall thereafter, at his future audit, require and examine the receipts of the several creditors for any dividend; and the Commissioners of her Majesty's Treasury shall have power to make rules to be observed by the treasurers of County Courts respecting the audit of the clerk's accounts of insolvent estates, and shall have the same power of making rules for securing the balances and other sums of money in the hands of any officer of the County Courts under the last-mentioned act, and for the due accounting and application of such balances, and other sums that they have with

respect to balances, and other sums in the same hands, under the said act of the 9 & 10 Vict."

It is further provided, by the clause next in order, that the County Court clerk and high bailiff shall deliver quarterly to the treasurer an account of all fees received by them under the 10 & 11 Vict. c. 102.

Two new clauses are introduced which have a local and personal rather than a general importance, for abolishing the Hundred Court of Offlaw in the County of Stafford, and giving compensation to the officers of that Court.

The only clause remaining to be described is that to which we already called attention, and which, judging from what appeared in the daily newspapers, we presumed, had been withdrawn, though, as intimated, (*ante*, p. 174,) with a probability of its being revived. The clause which is insidiously framed, and is intended to effect much more than it professes, appears in the bill now before us in the following modified form :—

"Whereas by the said act passed in the 9 & 10 Vict., it was enacted, that no person should be entitled to appear for any other party to any proceeding in any of the said Courts unless he be an attorney of one of her Majesty's Superior Courts of Record, or a barrister-at-law instructed by such attorney on behalf of the party, or, by leave of the judge, any other person allowed by the judge to appear instead of such party, but that no barrister, attorney, or other person, except by leave of the judge, should be entitled to be heard to argue any question as counsel for any other person in any proceeding in any Court holden under that act: Be it enacted, That the said provision shall not be deemed or construed to apply to any case within the jurisdiction given to the said Courts by this present act, or by any other act, other than the above partly recited act.

The clause, as above cited, is precisely similar to that proposed by the Attorney-General, (and which, in deference to the strong opposition with which it was met, we understood he had undertaken to withdraw,) with the omission of the words,— "that in all cases in which jurisdiction is given to the said Courts by the present act, or by any other act than the above partly recited act, barristers at law and attorneys shall have and enjoy such rights and privileges as have been hitherto used and exercised by them respectively in the Superior Courts of Common Law at Westminster." Now, though the words omitted rendered the object and effect of the section more distinct and palpable, it is not certain that

its tendency and effect is in any manner controlled by the omission. It may be contended, that under the section, as curtailed, the intention of the legislature was, that in causes above 20*l.*, the barrister should have *exclusive audience* in the County Courts. At all events, the clause expressly confines the salutary restrictions imposed on barristers by the 9 & 10 Vict., by which they were prohibited from appearing for parties in the County Court, *unless instructed by an attorney*, to cases not exceeding 20*l.*

If the clause should pass, therefore, in its present form, this absurd and monstrous anomaly will be established, that in cases under 20*l.*, and within the original jurisdiction of the County Courts, a party desiring the advocacy of a barrister can only obtain it through the instrumentality of an attorney; but if the subject-matter of the plaint exceed 20*l.* in value, he may instruct the barrister without the intervention of an attorney. In cases in which, from the amount at stake, the client could possibly afford to pay two persons—barrister and attorney—he may have the former without the latter; but in cases which seldom afford such an outlay, the advocacy of the barrister can be obtained only through the agency of an attorney.

The practical effect of the clause, we are satisfied would be, to break down the barrier which so advantageously for the public and the profession separates the functions of the barrister and attorney, and to encourage an usurpation which must of necessity create a spirit of resistance. We trust, however, that these, and more obvious considerations, will induce the legislature, in some future stage, to reject this absurd and objectionable proposition, and that the mischievous project of establishing a mongrel Bar in connection with the County Courts, will be abandoned by that branch of the profession which it is more peculiarly calculated to degrade in public estimation.

A paper containing the following statement has been printed and circulated by the Incorporated Law Society. The question does not much affect the practitioners in London, but is of great importance in the Country; and wherever they justly can, the Council of the Society are always ready to aid their professional brethren.

REASONS AGAINST THE CLAUSE RELATING TO THE AUDIENCE OF BARRISTERS.

The 13th clause of the bill, as amended by the Committee, and on re-commitment (printed by order of the House, 1st July), proposes

that the 9th and 10th Vict. c. 95, s. 91, requiring a barrister to be instructed by an attorney on behalf of the party, shall not apply to cases within the jurisdiction given to the County Courts by *this bill*, or by any other act than the 9th & 10th Vict. c. 95.¹

It is submitted that, before this clause can pass, the legislature will have to determine whether or not it will be advantageous to the suitors of the Court and the due administration of justice, that barristers-at-law may act as attorneys-at-law.

If the clause were to pass it would lead, on many occasions, to a contravention of the statutes relating to attorneys, and which statutes ought not thus to be incidentally repealed, nor ought the rights and privileges of attorneys, under such statutes, to be abrogated by any indirect enactments. For either barristers must act as attorneys in collecting evidence and preparing briefs, or ignorant and unqualified persons must be employed.

It is not just or reasonable towards the attorneys and solicitors, that the proposed change should take place. Barristers alone are eligible to judicial situations; and, of late years, they alone can be Commissioners of Bankrupts, and Judges of the County Courts, to which offices formerly attorneys were equally eligible; and almost all public appointments requiring legal knowledge are now conferred on barristers, including several solicitorships to government boards.

It is the ancient right of the suitors in all civil matters to appear by attorney, and the statutes enabling them to appoint attorneys are still in force;² and the terms of the retainer or warrant, as stated in the earliest rolls of Court, show that they are "put in the place" of their clients as plaintiffs or defendants.

The suitor who does not conduct his own case is at liberty, according to the present law of the County Courts, to employ an attorney only, or a barrister, (instructed by an attorney,) as he may think fit. In the Courts of Bankruptcy, also, where cases of great importance are investigated, often involving property to an unlimited amount, no exclusive right of audience of the Bar prevails, and the suitors are under no obligation to employ counsel.³

A claim of exclusive audience in cases transferred to the County Courts from the Insolvent Courts, was lately made by the Bar in the County Court of York. It was disallowed by the judge, with the concurrence of the then

Attorney-General, now the Chief Justice of the Common Pleas.

It would manifestly, therefore, be a great hardship on a suitor to be compelled, without reference to the magnitude or difficulty of the case, to incur the expense of preparing briefs and paying the fees of counsel. Where the nature of the case requires it, or the client prefers appearing by counsel, it will be the duty (as it is the interest) of the attorney to instruct counsel; but the client ought not to be compelled in all cases to incur that expense, or to be deprived of professional assistance altogether.

CHARITABLE TRUSTS BILL.

REASONS FOR THE EXEMPTION OF THE ROYAL HOSPITALS OF LONDON.

A LARGE portion of the above bill is applicable only to the management of small charities.

But it contains provisions extending to all charities, and creates a control over them which, as regards the Royal Hospitals of London, is quite uncalled for, and which will, it is apprehended, be found very mischievous in its operation upon these institutions.

The proposed interference and control is of the following nature:—

The Commissioners appointed under the act are, by section 8, to inquire into and examine the management and application of the funds of all charities, and investigate all defects, errors, and abuses in such management.

Under section 10, they are authorised to call for and inspect all accounts, deeds, books, and documents; to summon before them any person connected with the institutions, and to require such person to attend punctually, and give full answers, either orally or in writing, to all such questions as the Commissioners shall think fit to ask on the subject of the institution.

This latter power is extended by section 11 to an authority to examine on oath; and, by section 12, the refusal to appear and answer is made punishable by a fine of 20*l*.

The effect of sections 18 and 19 will be to subject the Royal Hospitals to an Annual Tax of 50*l*. each for the purposes of the act.

By section 58, the Royal Hospitals would be bound, by a certain day in every year, to cause a statement, in writing, to be made of their income and revenue, and their receipts and expenditure, and a balance sheet, containing a clear statement of the balance; to have two copies made of these documents at their own expense, and send one to the Commissioners, and the other to the clerk of the neighbouring County Court.

By section 59, neglect to comply with this provision is punishable with a fine of 20*l*.

By section 73, power is given to unite any smaller charities of a similar nature, whose funds are insufficient, to the Royal Hospital.

By section 78, the universities and certain public schools, cathedrals, and colleges, whose endowments are exempted

¹ The other acts are 10th & 11th Vict. c. 104, transferring insolvency cases from the District Bankruptcy Courts to the County Courts; and the 13th & 14th Vict. c. 61, enlarging the jurisdiction of the County Courts from 20*l*. to 50*l*.

² 10th Hen. 3, c. 10; 3rd Edw. 1, c. 42; 6th Edw. 1, c. 8; 13th Edw. 1, c. 10; 15th Edw. 2, c. 1; 7th Rich. 2, c. 14; and 7th Hen. 4, c. 13.

³ 1st & 2nd Will. 4, c. 55, s. 10; and 12th & 13th Vict. c. 106, s. 44.

It will be difficult to assign a reason for the exemptions thus made, which is not applicable to the Royal Hospitals, institutions which, in common with those exempted, are the subject of open and almost public management, and as to which ample means already exist for the discovery and repression of abuses.

It will be found that there are circumstances connected with the Royal Hospitals which wholly distinguish them from the large mass of charitable institutions throughout the country.

The large mass of charities consists of an administration of funds provided by the munificence of long deceased benefactors, all connexion and interest having ceased between the donors and the individuals who have to administer such trusts.

The distinctive feature of the Royal Hospitals is, that the entire management of each of them respectively is confided to a body of governors who are themselves also donors and large contributors to the funds of the institutions, and who undertake that management solely from motives of charity.

The governing bodies consist of gentlemen whose fortunes enable them to devote much of their time to the interests of these institutions.

The governors now living and administering the funds of these Royal Hospitals have themselves contributed to the funds of such institutions upwards of the sum 250,000*l*.

Inasmuch as these individuals acquire no personal gain by their management, they have no reason to submit to interference, and nothing to lose by their resignation: whereas, on the other hand, a long connexion with these hospitals, and participation in their government, oftentimes creates a strong interest, which manifests itself in large donations and still larger legacies.

It is to be apprehended, that under a new system, the direct tendency of which is to annihilate all pride and interest in the government of these institutions, the unpaid governors may throw up their task, and cast the expense of management on the hospital funds, and cease to take any longer that interest in the institutions under their care which has led to the hospitals being so largely benefitted.

For what voluntary and unpaid officer, it may be asked, will submit to be subject to the control of Commissioners, and exposed to the pains and penalties of the before-mentioned clauses of the bill?

It is submitted that a distinction should be made between charitable trusts in which active charity has long ceased to exist, and the due administration of the funds is alone to be kept in view, and those foundations in which charitable energy is still alive, supporting the institution with its exertions, and maintaining it with its funds.

Permanent regulations exist, which have been made with the greatest care and caution, as to the mode of keeping the accounts of the Royal Hospitals, and for controlling their expenditure; and such accounts are periodically audited and submitted to the entire body of

governors (in each case several hundreds in number), independently of being accessible to every individual governor, and annually printed and sent to each governor.

In the proposed substitution, therefore, of salaried services for voluntary exertions, and the supervision of Government Commissioners for the control hitherto exercised by the numerous body of the governors, and through that body, by the public; no benefit can be attained; but, on the contrary, grievous injury will be inflicted.

It is equally clear, that the Royal Hospitals will not partake of the advantages which the bill proposes to provide for charities generally.

Being corporations, the provisions for appointing new trustees, and for securing the transmission of the legal title to property, will not apply to them.

They are not entrusted, like many other institutions, with trusts for various purposes, nearly the whole of their funds being held for the general purposes for which they are instituted.

No difficulty has been experienced in administering their funds, and they would derive no benefit from the clauses of the bill for obtaining the advice of the Commissioners in cases of difficulty.

The same observation applies to the protection which the bill affords against improper informations being filed, as the evil which it proposes to remedy, is one from which the Royal Hospitals have not sustained, and are not likely to sustain, any inconvenience.

They are willing to rely on the publicity of their proceedings, and the nature of their government, to afford them protection against all improper informations.

The present government of the Royal Hospitals was created and established by act of parliament, 32 Geo. 3, c. 77.

It is therefore submitted, that it is inexpedient by a general measure relative to Charitable Trusts, to interfere with these Royal Hospitals, whose government was established by separate enactment; and that as the Royal Hospitals are distinguishable for the reasons before stated from the mass of Charitable Trusts, they ought not to be subject to a general measure like the present.

The main part of the argument thus powerfully stated will also apply to many other Institutions, whose vested funds have been derived from the donations of former persons, and the increase of which must depend on future benefactions: We have heard of the "cold charity of a Churchwarden?" what shall be said of the charity of Commissioners, seated in Secret, Houses, summoning local Committees to render an account of the way in which their own donations and those of their neighbours have been applied? How long will such donations continue, and such Committees exist?

A TAXING MASTER'S SALARY AND COMPENSATION.

HIS AGE 37 IN JULY, 1850.

Present Receipts.

Amount of Salary as Taxing Master received by him up to 25th November, 1850, under the Act of 1842, (5 & 6 Vict. c. 103.) the salary being 2,000 <i>l.</i> a year	£.	s.	d.
	16,027	3	5
Amount of compensation received by him up to the same period, at the rate of 5,204 <i>l.</i> a year	41,704	3	6

Total received for salary and compensations	57,731	6	11
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Value of his Office and future Compensation.

Value of his future salary taken as an annuity, supposing he continues to be a Taxing Master for his life,—according to the Legacy Duty Table, his age now being 37

27,096 0 0

Value of his compensation as an annuity, supposing he continues to hold the said office during his life

70,493 0 0

Gross amount to be paid to his executors for the first seven years after his death at 2,701*l.* a year

13,907 0 0

Grand Total £. 174,227 6 11

See Lord Langdale's Order as Master of the Rolls for his admission as a Sworn Clerk, which Order gave him a title to the compensation. The Order is in the Book at the Rolls.

UNITED LAW CLERKS' SOCIETY.**THE NINETEENTH ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.**

It has hitherto been the pleasing duty of the Committee to present to the Donors and Members a satisfactory Report of the operations and position of the Society during each succeeding year, and they are happy to say that the year just elapsed forms no exception to those which have preceded it. The demands upon the funds increase with the age of the Society, but they have been met with a nearly corresponding advance in income, which has enabled the Committee, not only to meet every demand, but to make some further addition to the Society's investments.

The Claims by members upon the Sicknes Fund have been more numerous than in the year preceding. During the past one, the number has been 31, and the applicants received various sums amounting to 276*l.* 15*s.*, exceeding the same expenditure of the year before by nearly 100*l.* Since the commencement of the Society, it has afforded assistance of this kind to the extent of 2,447*l.* 17*s.*

With regard to the applications from Members (permanently disabled by age and other infirmities) for the superannuation allowance, the Committee have to report two additional claims, both of which, after careful investigation by the Society's medical officer, have been allowed. Each of these two Members will receive for life a sum amounting yearly to 31*l.* 4*s.* A life assurance only would not meet the wants of these Members, and the purchase of an annuity of equal amount would be beyond their means. There are now six Members in receipt of this allowance, and, with one exception, all need it from afflictions which have overtaken them in the vigour of life:—three are cases of insanity,—two of paralysis,—and one of severe pulmonary disease. One of the two Members whose claims have just been made, is only aged 48, and the other but 31. The importance of this fund to the Members is the more apparent when it is remembered that, to satisfy the claims of the six Members just mentioned, the interest of a sum of 6,000*l.* is required. One of them, whose contributions have amounted to 24*l.* 5*s.*, has already received 159*l.* 12*s.*, and another, who has paid 26*l.* 13*s.* 6*d.*, has received 204*l.* 0*s.* 6*d.* All will receive their pensions for life, and on their decease, the family of each will be entitled to an additional sum of 50*l.*

Although the Members, during the past year, have increased in number, there has been no increase in the number of deaths, which has not exceeded 4. To the families of these four Members 200*l.* has been paid in sums of 50*l.* each, and five Members whose wives died during the same period have each received the sum of 25*l.* Adding these disbursements to those of previous years, on this account alone, makes the total amount thus paid to the Members and their families 3,752*l.* 10*s.*

Since the last Annual Meeting the Society has lost by death the Right Honourable the Earl Cottenham, who, in its infancy, extended to the Society his countenance and support, and become its first patron. While the Committee report this loss with regret, they have to announce that the present Lord Chancellor has in the kindest manner consented to fill the office so long occupied by the late Earl.

The Society continues to receive from the profession satisfactory evidence of their approval and kind feeling. Since the last anniversary, besides other donations, they have to announce a third donation from the Benchers of the Inner Temple of 31*l.* 10*s.*, making the total contributions from that learned Society 136*l.* 10*s.* The Committee also have the pleasure of announcing that a Society of Gentlemen of the Bar, having a surplus fund, have been pleased to divide it between this institution and King's College Hospital.

Fully aware that the yearly claims upon the funds must necessarily increase in amount, the Committee have sought to augment the Society's invested capital, and they are enabled to report that after meeting the demands of the past year the investments with the National

Debt Commissioners, which on the 20th of May, 1850, amounted to 12,376*l.* 4*s.* 2*d.*, were increased, on the same day of the present year, to 13,458*l.* 18*s.* 8*d.* The total receipts of the year on account of the general benefit or principal fund, from which the payments already mentioned have been made, have amounted to 1,937*l.* 0*s.* 2*d.* and the expenditure to 999*l.* 0*s.* 9*d.* It is with pleasure the Committee report that the Members' Contributions alone during the year have amounted to 1,052*l.* 12*s.*

The principal object of the casual fund (which is entirely distinct from the general fund) is to assist with small gifts of money Law Clerks, not Members, and their widows suffering from unavoidable distress. Members and their families are also entitled to relief out of this fund, which is supported by the donations of the profession and a subscription from every Member. The applications for relief during the year have been 49, nearly all from non-members or their widows. Most of these cases have come to the Committee strongly recommended by donors. The circumstances of each applicant were personally inquired into by the Committee, and 40 found to be deserving, relieved accordingly. The condition of many of them was most distressing, and far too painful for public detail: in some instances they did not apply till all means of support had failed: in others they would never have applied had not their cases been brought before the Society by benevolent members of the profession to whom their condition had been made known. The Committee have seen that the timely aid afforded by the Society has preserved a home to some which otherwise would have been broken up, and to others has been instrumental in restoring them to health and employment. The sum expended in affording this relief, including several small loans to Members, has been 328*l.* 2*s.* 6*d.* These loans, which are made to Members only, without interest or charge of any kind, materially diminish the claims upon the general fund, many Members preferring temporary pecuniary assistance from this fund to claiming those benefits in sickness which the rules allow. The total amount granted to Members, non-members, their widows and families, out of the casual fund since the establishment of the Society amounts to 3,785*l.* 16*s.*

The constant and pressing demands upon this fund prevent the investment of any portion of it. At the audit, in April, 1850, there was a balance of 79*l.* 3*s.* 6*d.* in hand, since which 373*l.* 19*s.* 5*d.* has been received, and 360*l.* 9*s.* 8*d.* expended, leaving a balance of 92*l.* 13*s.* 3*d.* in favour of the Society.

The Committee cannot conclude without sincerely thanking the profession for the support the Society has received. Without it, the benefits must necessarily be considerably limited. The continuance of such support will enable the Society to afford liberal pecuniary aid to distressed Law Clerks and their families in all cases where pecuniary assistance can

mitigate the severity of distress or physical suffering. The Society is now expending in actual relief considerably more than 1,100*l.* a year, which must become larger; and the Committee hope that, so long as the Society's affairs are conducted with care, and all demands upon it met with promptness and liberality, it will receive a continuance of that kind consideration and support which is essential to its usefulness and prosperity.

HARRY G. ROGERS, Sec.

June 25th, 1851.

NEW QUEEN'S COUNSEL.

WITH DATES OF CALL TO THE BAR.

Equity.

James Campbell, Esq., of Lincoln's Inn, called 8th Feb., 1821.

Thomas Chandless, Esq., of Gray's Inn, called 19th June, 1822.

William Elmsley, Esq., M. A., of the Middle Temple, called 11th Nov., 1825.

John William Willcock, Esq., of the Inner Temple, called 25th Nov., 1825.

Walter Coulson, Esq., of Gray's Inn, called 26th Nov., 1828.

William Thomas Shaw Daniel, Esq., of Lincoln's Inn, called 6th Feb., 1830.

John Baily, Esq., M. A., of Lincoln's Inn, called 10th May, 1832.

Brent Spencer Follett, Esq., of Lincoln's Inn, called 7th June, 1833.

Richard Davis Craig, Esq., of Lincoln's Inn, called 18th Nov., 1834.

William Bulkeley Glaess, Esq., of Lincoln's Inn, called 18th Nov., 1834.

James Anderson, Esq., of the Scotch Bar, 7th June, 1828, and of the Middle Temple, called 7th June, 1839.

Charles James Hargreave, Esq., of the Inner Temple, called 7th June, 1844.

Common Law.

Robert Ingham, Esq., M. A., of Lincoln's Inn, Recorder of Berwick-upon-Tweed, called 16th June, 1820.

Graham Willmore, Esq., M. A., of the Middle Temple, called 27th Nov., 1829.

Frederick William Slade, Esq., of the Middle Temple, called 25th June, 1830.

John George Phillimore, Esq., M. A., of Lincoln's Inn, called 23rd Nov., 1832.

John Mellor, Esq., of the Inner Temple, Recorder of Warwick, called 7th June, 1833.

Robert Pashley, Esq., of the Inner Temple, called 17th Nov., 1837.

Samuel Warren, Esq., of the Inner Temple, called 17th Nov., 1837.

George William Bramwell, Esq., of Lincoln's Inn, called 4th May, 1838.

William Atherton, Esq., of the Inner Temple, called 22nd Nov., 1839.

Hugh Hill, Esq., of the Middle Temple, called 29th Jan., 1841.

RECENT DECISIONS IN THE SUPERIOR COURTS. AND SHORT NOTES OF CASES.

Lord Chancellor.

July 2.—*Duke of Leeds v. Earl of Amherst*—Application refused to advance appeal for hearing, but execution of decrees stayed pending appeal.

— 2.—*Dean of Ely v. Islip*—Application refused to advance appeal for hearing.

— 2, 3.—*Vivian v. Cochrane*—Cur. ad. vult.

— 3, 4.—*Manchester, Sheffield, and Lincolnshire Railway Company v. Great Northern Railway Company*—Part heard.

— 4.—*Truefitt v. Umpleby*—Appeal dismissed from Vice-Chancellor Knight Bruce, with costs.

— 4, 5.—*Hargreave v. Hargreave*—Cur. ad. vult.

— 5.—*Harvey v. Hewett*—Part heard.

Rolls' Court.

Rice v. Gordon and others. June 9, 10, 1851.

ISSUE AT LAW.—COSTS OF SUCCESSFUL DEFENDANT.

On the trial of an issue directed at law, defendant S. obtained a verdict, but it appeared that he had neglected to schedule in his answer certain documents which proved his case at law, and the production of which would have rendered the issue unnecessary: Held, that S. was entitled to have the bill as against him dismissed with costs, except so far as related to such documents not scheduled and consequent thereon.

R. Palmer, Sidebottom, and Bramwell, appeared in support of a petition on behalf of the defendant, William Henry Scarnett, seeking the dismissal of the bill as against the petitioner with costs. An issue which had been directed to try the defendant's right to a promissory note, had been decided in his favour.

Roupell and Cole, for the executors of William Rice, deceased, contra, on the ground that the defendant had not produced certain documents which proved his case, and on the production of which the plaintiff would not have tried the issue.

The Master of the Rolls said, the ordinary rule of the costs abiding the result of an issue directed by the Court, must prevail, and that the defendant was entitled to his costs, except so much of the amendment in the amended bill and of his answer thereto as related to the documents in his possession which he had neglected to schedule in his answer.

July 2.—*Sayer v. Collard and others*—Reference to take accounts.

— 3.—*Palmer and another v. Marshall and others*—Injunction granted to restrain infringement of copyright, with leave to defendants to move to dissolve on short notice.

— 5.—*Douglass v. Andrews*—Judgment on construction of will.

— 2, 3, 5, 6.—*Davenport v. Charlesworth*—Judgment on further directions.

— 2, 7.—*Noble v. Meymott*—Order for transfer of funds by trustee, and trustee allowed his costs.

— 7.—*Dudman v. Jordan*—Judgment on exceptions to Master's report.

— 8.—*Lawrie v. Clutton*—Part heard.

Vice-Chancellor Knight Bruce.

Ex parte Johnson, in re Cross. June 4, 1851.

BANKRUPTCY.—OFFICIAL ASSIGNEE.—PROTECTION FROM PROCEEDINGS.—INVALID FIAT.

The Court restrained a party who had obtained a verdict in an action at law brought against the official assignee and creditors' assignee from issuing execution against the official assignee for the amount of the costs, the fiat proving to be invalid, and the creditors' assignee having obtained protection under the Insolvent Debtors' Act.

THIS was a petition on behalf of Mr. Patrick Johnson, the official assignee in bankruptcy, to be protected from all proceedings in respect of the costs incurred by Mr. J. C. Archer in contesting the validity at law of the fiat which had been issued in this case against Henry Cross. Mr. Archer, who claimed by a title paramount, had brought two actions against the creditors' assignee and the present petitioner, in which he recovered a verdict, the costs amounting to 910*l.* 2*s.* 6*d.*, and upon the creditors' assignee taking the benefit of the Insolvent Debtors' Act, Mr. Archer was about to issue execution for such costs against the petitioner, who thereupon applied to Mr. Commissioner Evans for protection, and upon the Commissioner being of opinion he had no jurisdiction to interfere, presented this petition.

Roupell and Walford, in support, referred to the 12 & 13 Vict. c. 106, s. 41, which provides that "no official assignee shall be personally responsible or liable for any act done by him, or by his order or authority, in the execution of his duty as such official assignee, by reason of the petitioning creditor's debt, trading, or act of bankruptcy, upon which any adjudication of bankruptcy shall have been grounded, or of any or either of such matters, being insufficient to support such adjudication;" "and if any action shall be brought against the official assignee, either solely or jointly with the creditors' assignee," "it shall be lawful for a judge of the Court in which the same shall be brought, upon application of the official assignee, and upon an affidavit of fact, to set aside the proceedings in such action so far as the official assignee is concerned, with such

costs, or without costs, as to such judge shall seem meet," and cited *Friend v. Lawrence*, 1 Jac. & W. 665.

Taylor, for the creditors' assignee.

The Vice-Chancellor said, that as Mr. Archer did not appear the proceedings must be stayed. *Ex parte Van Sandau*, 1 De Gex, 55.

Ex parte Bell, in re Taylor. June 11, 1851.

PETITIONING CREDITORS.—LANDLORD AND TENANT.—WAIVER OF RIGHT OF DISTRESS FOR YEAR'S RENT.—BANKRUPT.

Brewers, who were the landlords of a public-house occupied by T., upon a year's rent being in arrear, put in a distress, but, having petitioned for an adjudication in bankruptcy at the request of certain other creditors, withdrew the distress, upon the official assignee who had been appointed under the adjudication agreeing to pay them the amount of the year's rent out of the assets, and they proved under the bankruptcy for 100*l.* odd for beer supplied to T.: Held, on appeal from Mr. Commissioner Ellison, that the appellants had not lost their right of distress by becoming petitioning creditors, inasmuch as they were creditors in respect of another debt of sufficient amount to support the petition, and that they were therefore entitled to retain the rent which had been paid them by the official assignee.

Quere, whether, in the absence of such other debt, they would not have lost their right of distress, and been entitled only to be paid *pari passu* with the other creditors.

THIS was an appeal from the decision of Mr. Commissioner Ellison directing the appellants, who were the landlords of the bankrupt, to refund the amount of the year's rent, which they had received from the official assignee out of the assets, on the ground that they had waived their right of distress and were only entitled to payment *pari passu* with the other creditors. It appeared that the appellants were brewers of Newcastle-on-Tyne, and the bankrupt the tenant of a public-house belonging to them, and that a year's rent being due in August last, they distrained on October 28 following, and on the 29th the bankrupt signed a declaration of insolvency. The appellants, upon being applied to by other creditors, in order to prevent the property being taken by execution creditors, then petitioned for an adjudication in bankruptcy, and on Oct. 31 the tenant was adjudged a bankrupt, and on the official assignee agreeing to pay the year's rent out of the assets, they relinquished the distress and subsequently proved under the bankruptcy for 100*l.* odd for beer supplied to the bankrupt.

Makin and *De Gex* for the appellants; *J. V. Prior*, for the assignees, contra.

The Vice-Chancellor said, that as the appellants had proved for a debt of sufficient amount to support the petition for adjudication, which

was distinct from that for which the distress was levied, they were entitled to the year's rent and the appeal must be allowed, the costs of both parties to come out of the estate.

July 2.—*Scholefield v. Cahuan*—*Cur. ad. vult.*

— 2.—*Ex parte Youngman*, in re Bliss—Stand over.

— 2.—*Ex parte Webb*, in re Dawson—Appeal allowed from Commissioner and proof admitted.

— 3.—*Bostock v. North Staffordshire Railway Company*—Stand over for trial of action at law.

— 3.—*Truefitt v. Umpieby*—Order for commitment of defendants for breach of injunction.

— 4, 7.—*Macintosh v. Great Western Railway Company*—Exceptions to answer.—Stand over with leave to amend.

— 7.—*Webster v. Wilson*—Part heard.

— 8.—*Betts v. Betts*—Decree for dissolution of partnership, appointment of receiver and sale.

Vice-Chancellor Lord Cranworth.

Davis v. Greenlaw. June 10, 1851.

INJUNCTION OBTAINED EX PARTE.—LOCAL PAVING COMMISSIONERS.—NOTICE OF REMOVAL OF OBSTRUCTION.—COSTS.

The plaintiff, a builder, having obtained permission from paving commissioners acting under a local act to raise a hoarding round certain houses which he was building on condition of his placing a rail and platform for the convenience of the public, neglected to comply with such condition, and the commissioners accordingly, on May 30, 1849, gave him notice to remove the hoarding, under the act which rendered a 10 days' notice necessary. The hoarding was not removed, and on August 8 the commissioners gave a second notice, and that if not removed their foreman would pull it down on the following day. The plaintiff then filed his bill to restrain such removal, and obtained an *ex parte* injunction, and the commissioners then put in an answer, and the plaintiff, on August 18th, removed the hoarding: Held, that the first notice was sufficient, and that the bill must be dismissed with costs.

THIS bill was filed by the plaintiff, a builder at Woolwich, to restrain the removal by the town paving commissioners of a hoarding raised by him round certain houses in course of erection at the corner of Powis-street and Green-end, pursuant to their notice to that effect, dated 8th August, 1849. It appeared that the plaintiff had obtained permission from the defendants to put up the hoarding on condition of his placing a rail and platform round it for the convenience of the public, and that this condition not being complied with, they had, on May 30, 1849, given him notice to remove the hoarding forthwith. The obstruction not being, however, removed, the defendants, on August 8th, gave a further notice, and that if

it were not so removed, the defendants' foreman would take it down on the 9th. The plaintiff then instituted this suit to restrain such removal, and obtained an injunction *ex parte*, but on the 18th August, and after an answer had been put in, the plaintiff removed it himself.

Bellell and *Elstine*, for the plaintiff, contended that the defendants should bear the costs, as the notice given on the 8th August did not justify the threatened removal on the 9th, under the local act, which required 10 days' notice.

Stuart, Roll, and Shadwell, for the defendants, contra.

The Vice-Chancellor said, that the notice given in May was sufficient to have entitled the defendants to remove the hoarding in 10 days, and that the second notice did not prevent them from acting under the first, and the bill must therefore be dismissed with costs.

July 2.—*Prescott v. Wood*—Petition refused to remove testamentary guardian.

—3.—*In re Direct Birmingham, Oxford, and Brighton Railway Company, ex parte Bright*—Master's decision affirmed.

—3.—*Heath v. Chapman*—Reference as to next of kin of testator.

—2, 4.—*Egerton v. Earl Brownlow*—Cur. ad. vult.

—3, 4.—*In re Great North of England, Yorkshire and Glasgow Union Junction Railway Company, in re Carrick*—Reference back to Master to review report.

—3.—*Attorney-General v. Bishop of St. David's*—Order on petition for payment of money out of charity funds to steward to pay off incumbrances.

—7.—*In re Chepstow and Forest of Dean Railway Company*—Cur. ad. vult.

Vice-Chancellor Turner.

Robins v. Hobbs. June 14, 1851.

CLAIM FOR ACCOUNT.—DEBTOR AND CREDITOR ARRANGEMENT ACT.—WHAT ESTATE PASSES TO TRUSTEE.

Held, that the estate and effects of the arranging debtor, provided by s. 8 of the 7 & 8 Vict. c. 70, to vest in the trustee appointed under the statute, comprises only the property which the creditors have agreed to accept as a composition for their debts, and where they had agreed to accept one-sixth part of the future profits of the plaintiff's business as an attorney, held, that he was entitled to a decree for an account on a claim filed under the orders of April, 1850, against the defendant, his partner, as to any balance which might be due and owing to him from such defendant.

THIS claim was filed under the orders of April, 1850, for an account of the partnership transactions as attorneys.

Shee, in support.

Southgate, contra, on the ground, that the

plaintiff had taken the benefit of the 7 & 8 Vict. c. 70, and that a trustee had been appointed of his estate and effects, citing s. 8, which enacts, that "from and after the date of the filing of such resolution and agreement as aforesaid, all the estate and effects of such positioning debtor shall vest in the trustee (if any such shall be appointed) by virtue of such resolutions, and without any deed, as fully as if such trustee were an assignee under the statutes relating to bankrupts; and every such trustee may sue and be sued as if he were such assignee in bankruptcy."

It appeared that the creditors had agreed to accept one-sixth part of the future profits of the plaintiff's business as a composition for their debts.

The Vice-Chancellor said, that the estate and effects mentioned in the schedule as becoming vested in the trustee only comprised the portion which the creditors agreed to accept as a composition, and did not therefore include any part of the balance which might be due and owing to him by the defendant, and the plaintiff was entitled to a decree.

July 2, 3.—*Beeson v. King*—Judgment on construction of will.

—5.—*Freeman v. Lomas*—Order for payment of legacy to assignees of bankrupt.

—5.—*Webb v. Direct London and Portsmouth Railway Company*—Cur. ad. vult.

—8.—*Hamley v. Wood*—Decree for raising money in accordance with trusts of marriage settlement.

Court of Queen's Bench.

Armistead v. Wilde. June 5, 1851.

INNKEEPER.—LIABILITY FOR LOSS OF GOODS BELONGING TO GUEST.—EVIDENCE OF NEGLIGENCE.

A commercial traveller stopped at the defendant's inn and placed certain monies, in the presence of several persons, in his driving-box, to which there was a very common lock, and in accordance with the usual practice at the inn, left it in the commercial room upon going to bed, and the money was stolen. On the trial of an action brought by the traveller's employer to recover the sum stolen, the presiding judge left it to the jury to say whether, under the circumstances of the case, there was or was not gross negligence, and the jury found for the defendant. Held, no misdirection.

Quære, whether it was necessary to show gross negligence, and semble, that simple negligence is sufficient to remove the prima facie liability of an innkeeper of common law for his guests' property, deposited in his inn.

A RULE nisi had been granted, on April 24 last, to set aside the verdict for the defendant, and for a new trial of this action, which was brought against the keeper of an inn at Liverpool to recover the sum of 200*l.* which had been

deposited by the plaintiff's servant, a commercial traveller, in his driving box, and left in the commercial room before going to bed, and had been stolen. The defendant pleaded "not guilty," and that she was not the innkeeper, and it appeared on the trial before Mr. Baron Platt, at the last Liverpool assizes, that it was customary for commercial travellers at the inn to deposit their valuable property in their driving-boxes in the commercial room for the night, but it also appeared that the plaintiff's servant had placed the money in the box, which had a very common lock, in the presence of several persons. The defendant's mother had kept the inn until her death, about three months before the loss in question, and the defendant, who had received the customers, continued to receive them after her mother's death, but the license had not been transferred to the defendant, and her mother's name still remained over the door, until three weeks after the loss, when the transfer took place, but the mother's executors, although they had proved the will, had not interfered in the business. The learned Baron having left it to the jury to say whether a prudent man would not, under the circumstances, have carried his money into his bed-room, or have deposited it with his landlord, and whether the defendant was keeper of the inn, and the jury having found for the defendant on both points, this rule had been obtained.

Knowles and Crompton showed cause; *J. Henderson* in support: *Richmond v. Smith*, 8 B. & C. 9; *Kent v. Shuckard*, 2 B. & Ad. 803.

The Court said, that there was no doubt of the Common Law liability of an innkeeper to take care of the goods belonging to his guests, but that such liability might be removed by the guests' own negligence, and it was doubtful whether simple negligence would not suffice for the purpose. And as the question left to the jury was, whether the leaving the property in the commercial room, with reference to all the circumstances, was or was not gross negligence, there was no misdirection, and the other question being thereby rendered unimportant, the rule would be discharged.

Court of Common Pleas.

Arden v. Goodacre. April 29, June 9, 1851.

SHERIFF.—ACTION FOR ESCAPE.—MEASURE OF DAMAGES.—NEW TRIAL.—MISDIRECTION.

Held, that the measure of damages in an action brought against the sheriff at the suit of the execution creditor for an escape, is the value of the custody of the debtor at the time of his escape, and that the jury, in estimating the amount thereof, ought to make no allowance on account of anything which might have been obtained by the creditor by subsequent diligence; and a rule was made absolute for a new trial where the jury had been directed that they might take into consideration the conduct of the creditor, and reduce the amount of

damages if they thought he had been guilty of any laches after the escape of his debtor.

THIS was an action against the Sheriff of Leicestershire to recover damages for an escape. It appeared that the plaintiff had issued a *ca. sa.* against a person named Bingham, who owed him 2,690*l.*, and that a sheriff's officer arrested him whilst returning from his father's funeral, but the horses of the carriage in which he was to be conveyed having run away, the debtor rushed into the house, the doors of which were closed by the servants, and he escaped and went over to France. On his return to this country, he was arrested at the suit of other creditors, when he proposed to assign over to them part of an annuity to which he was entitled under his father's will, and which it was proposed should have been assigned in order to obtain his discharge on his being in the custody of the defendant. At the trial before L. C. J. *Jervis*, his lordship directed the jury that they might take into consideration the conduct of the plaintiff in the suit, and reduce the amount of damages if they were of opinion he had been guilty of any laches after the escape of his debtor, and the jury having found a verdict for the plaintiff with 40*l.* damages, this rule nisi had been obtained by *Byles, S. L.*, for a new trial on the ground of misdirection.

Channell, S. L., and *Hugh Hill* showed cause, and contended the plaintiff should show what he had actually lost by the escape, and that he had done his best to retake the debtor, who in this case was insolvent and might easily have been retaken, and that the damages were sufficient.

Lush and Karslake in support, on the ground that the whole debt was the measure of the damages, inasmuch as the plaintiff would have been able, if the debtor had remained in custody, to enforce payment from him or his friends, and that the annuity to which he was entitled was sufficient to pay the whole debt.

The Court, after taking time to consider, said, that the true measure of the damages recoverable in an action on the case for an escape was the value of the custody of the debtor at the moment he escaped, and the jury, in estimating the amount of damages, ought to make no deduction for what might be obtained by the due diligence of the creditor afterwards, and that the rule did not operate oppressively against the sheriff, as he could retake the debtor or recover against him the damages he had been compelled to pay to the execution creditor. The rule for a new trial was therefore made absolute.

Court of Exchequer.

Heneage v. Galland; Tomline v. Galland.
June 7, 1851.

TITHES.—RIGHT TO.—COSTS OF ISSUES UNDER LORD TENTERDEN'S ACT.—GROUNDS OF EXEMPTION SET UP.
The Tithes Commissioner decided that the

Vicar of K. was entitled to the small tithes of L., and overruling the claim of two landowners of exemption on the grounds that the lands in question formed part of an abbey which had been dissolved in 27 Hen. 8, and that no tithes had been paid within the period prescribed by the 2 & 3 W. 4, c. 100; and issues were directed on the trial of which evidence was advanced of a grant of the tithes in question and of L. by Hen. 8 to one H. prior to the endowment by the T. abbey of the vicar with the tithes: a rule was made absolute on the vicar to pay the costs of such issues, notwithstanding the defence set up on the trial of the issue was not that relied on before the Court, the evidence so set up being extracted from a public document, and equally accessible to the vicar as the landowners.

THESE were feigned issues under the 2 & 3 W. 4, c. 100, (Lord Tenterden's Act,) by way of appeal from the decision of the Tithe Commissioner that the defendant, who was the Vicar of Kelstern, in Lincolnshire, was entitled to the small tithes of Lambcroft, as being within Kelstern, and the vicarage having been endowed with all small tithes by Thornton Abbey, in 1278; but on the trial before Mr. Baron Alderson, at the Lincoln assizes, the plaintiffs put in a grant of these tithes and of Lambcroft by Henry 8 to one Hatclyffe, and therefore prior to the endowment in 1278, and the verdict passed by consent for the plaintiffs. It appeared that the objections to the vicar's claim which had been taken before the Tithe Commissioner were, first, that the lands in question formed part of the demesne lands of the Abbey of Louth Parke, which was dissolved in 27 Hen. 8; and, 2ndly, that no tithes had been paid within the period of exemption prescribed by the 2 & 3 W. 4, c. 100. Rules nisi having been obtained for the payment by the defendant of the costs of these issues.

Humfrey and *Boden* now showed cause on the ground that the defence set up on the trial was not brought under the notice of the Tithe Commissioner, and that therefore, although

the plaintiffs had obtained verdicts, he should not be called on to pay the costs.

Macaulay, *Mellor*, and *Manisty*, for the plaintiffs, were not called on.

The Court said, that the general principle that a successful party was entitled to his costs must prevail, unless it appeared that any *malis praxis* had been resorted to. This appeared, however, a case of *communis error*, and the materials on which the plaintiffs succeeded had been obtained from public documents, which were equally accessible to the defendant as to them, and the rules therefore must be made absolute.

PRIEST PRIUS.

(Coram Mr. Baron Martin.)

Harris v. Lockwood. July 7, 1851.

STOCK-BROKER AND PRINCIPAL.—RIGHT TO SET-OFF PAYMENTS IN RESPECT OF OTHER TRANSACTIONS.—LIEN.

Semble, that a stock-broker is bound to deliver the shares which he is instructed to purchase, or the certificates for them, immediately on his receiving them to his principal, and that he cannot set-off, nor claim a lien thereon in respect of, payments made on account of other transactions with the same principal.

THIS was an action brought to recover the value of 25 shares in the East Lancashire Railway Company, part of 100 shares which the defendant, a stock-broker, had purchased for the plaintiff, but had retained, on the ground that he had a lien thereon, in respect of payments made on account of other transactions between them.

E. James, for the plaintiff; *Maynard* and *Willes*, for the defendant.

The Court having directed the jury that the defendant was bound to deliver the whole of the shares or the certificates immediately he received them to his principal, and could not set-off, or claim a lien in respect of his payments made on account of other transactions with the same principal, the plaintiff obtained a verdict.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

JOINT-STOCK COMPANIES' WINDING-UP ACT.

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lancacy, p. 147.

Courts of Equity:

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.]

ABORTIVE COMPANY.

Shareholder.—Stay of suit.—An order was made for winding up an abortive company. Afterwards a bill was filed by a shareholder, on behalf, &c., against the directors, complaining of their acts, and seeking to have the accounts taken, to make them responsible, and to have the deposits returned. The Court, on motion, stayed the proceedings in the suit. *Parbury v. Chadwick*, 12 Bear. 614.

ALLOTTEE.

1. A party who applied for and obtained an allotment of shares in a company, and paid the deposit on them, was held to be a contributory,

although he had not signed the deed of settlement, nor paid any call, and no other act had been done to make him a member. *In re Universal Salvage Company, ex parte Earl of Mansfield*, 1 H. & T. 593; 2 M.N. & G. 57.

2. *Shares subsequently forfeited by directors.*—The deed of settlement of a company purported to be made between persons referred to and described as being named in a schedule, of the first part, and persons named and described, of the second and third parts. There was no schedule to the deed, which, however, was executed by numerous persons besides those of the second and third parts. One of the clauses authorised the directors to declare forfeited the shares of any party to the deed who did not execute it; and another clause directed that, on a transfer, the transferee should take on himself the antecedent liability of the transferor. An allottee of shares paid his deposit and some calls, but did not execute the deed. The directors declared his shares forfeited, and carried them to the company's share account, and he submitted to the forfeiture. On the affairs of the company being, several years afterwards, wound up, under the Joint-Stock Companies' Winding-up Act, the Master excluded the allottee from the list of "contributories," holding that he was virtually a party to the deed, so as to enable the directors to forfeit his shares under its provisions; and that the forfeiture relieved him from responsibility in respect of losses accruing before it was declared. The Court, on appeal, affirmed the decision, holding that he had been connected with the company merely by contract, which might be put an end to by the consent of both parties. *In re Kollman's Railway Locomotive and Carriage Improvement Company, ex parte Beresford*, 2 H. & T. 388; 2 M.N. & G. 197.

See *Contributory*, 13.

APPEAL.

1. The Master charged with the winding up of a company, having, on two separate occasions, declined to place the name of J. P. on the list of contributories, either on his own account or in the character of a personal representative, and the Vice-Chancellor having, on two distinct appeals from those decisions, confirmed the same, an application was made to the Lord Chancellor to vary the two orders of the Vice-Chancellor, and asking that J. P. might be included in the list of contributories, as a contributory either in his own right or as personal representative of his late father, for a certain number of shares in the company, or any less number of shares, and either for the whole in one character, or for part in one character and other part in another character, as the Court should think fit: *Held*, on a preliminary objection, that this was in the nature of an original motion, and ought not to be heard before the Lord Chancellor. *In re St. George's Steam Packet Company*, 1 H. & T. 389; 1 M.N. & G. 291.

2. *Whether company within the act.*—On an appeal from the Master as to the insertion of a name on the list of contributories, it must be assumed that the company is within the Winding-up Act.

The proper mode of disputing that proposition is by an application to discharge the order for winding up the company. *In re Universal Salvage Company, Woodfall's case*, 3 De G. & S. 49.

See *Re-hearing*.

ASSIGNEES OF BANKRUPT.

The deed of settlement of a company provided, that, in the event of the bankruptcy of a shareholder his assignees should not be entitled to hold his shares without giving notice. It also enabled the directors, in the same event, to declare the shares forfeited, and provided, that, in the meantime, the bankrupt's estate should be liable, so far as the law would allow, to the payment of calls. On winding up the company under the Joint-Stock Companies' Winding-up Act, 1848: *Held*, that the names of the assignees of a bankrupt shareholder were properly inserted in the list of "contributories" in their character of assignees. *In re Kollman's Railway Locomotive and Carriage Improvement Company, Kuper's Assignees' case*, 3 De G. & S. 113.

COMMITMENT OF WITNESS.

Assignee of bankrupt contributory.—It was stated on behalf of the official manager, that the assignees of a bankrupt contributory had made such payments in respect of shares held by the bankrupt as would render the assignees personally liable as contributories, and that this would appear by the accounts signed by the assignees, and appearing upon the bankruptcy proceedings. The Commissioner acting in the bankruptcy declined permitting the registrar to attend with the proceedings to verify this statement. The official manager then summoned before the Master the surviving assignee, who stated, that he could not, without inspecting the proceedings, say whether he had signed such accounts; and that he believed that he had no right to inspect them for the purpose of enabling him to answer the question. His examination was adjourned to enable him to apply for leave to inspect them; but, on his again appearing, he had not done so: *Held*, that his answers were unsatisfactory; and *semble*, that they rendered him liable to be committed under the 12 & 13 Vict. c. 108, s. 19. *In re German Mining Company, Stone's case*, 3 De G. & S. 120.

CONTRIBUTORY.

1. Contributories liable in respect of expenses, properly incurred by the directors, are not necessarily liable to losses or expenses incurred improperly by the directors. *In re Universal Salvage Company, ex parte Earl of Mansfield*, 1 H. & T. 593.

Observations by the Lord Chancellor on the effect of placing the name of a person on the

list of contributories. *In re Universal Salvage Company, ex parte Earl of Mansfield*, 2 M.N. & G. 67.

2. *Executors*.—By a deed of settlement of a joint-stock company, executors were not to be proprietors: *Held*, nevertheless, that they were contributories, and might maintain a petition to wind up. *In re Norwich Yarn Company*, 12 Beav. 366.

3. *A.* agreed to take shares in a company and paid the deposits on them, but did not act as a member of the company. The object for which the company was formed became impracticable, and an order was made for winding up the affairs of the company. The Master inserted *A.*'s name in the list of contributories; but the Court ordered it to be struck out. *In re India and Australia Mail Steam Packet Company, Maudslay and Field's case*, 17 Sim. 157.

4. On the 1st of August, *A.* wrote a letter to the provisional committee of a company, requesting them to allot him 100 shares in it, and adding that he agreed to accept such shares as might be allotted to him. On the 11th of the same month, he wrote a letter to the solicitors to the company, consenting to be a provisional committee-man, and added that, if the solicitors would send him a printed form of application, he would fill it up with 50 or more. On the 11th of October following, he gave his formal consent in writing to become a provisional committee-man, and to take one or more share or shares. One of the books of the company contained an entry of 100 shares having been allotted to him, and another contained an entry of his being an applicant for 50 shares. On the 17th of October, the secretary to the company informed him that 100 shares had been allotted to him, and requested to be informed how many of them he intended to take: *Held*, that he had never bound himself to take any shares at all; and, therefore, that the Master had erred in placing his name on the list of contributories. *In re Irish West Coast Railway Company, Carmichael's case*, 17 Sim. 163.

5. After the registrar of joint-stock companies had granted a certificate of the complete registration of a company, an order was made for winding up its affairs. The Master excluded the name of a shareholder from the list of contributories, because the deed of settlement had not been executed by the number of covenanting shareholders required by the Joint-Stock Companies' Registration Act. But the Court ordered his name to be restored. *In re Independent Assurance Company, Bird's case*, 1 Sim. N. S. 47.

Case cited in the judgment; *Barrow Iron Company v. Barnett*, 19 Law Jour., C. P., 17.

6. *A.* applied by letter to the committee of a provisionally registered railway company for 50 shares in the undertaking, and, thereby, undertook to accept them, or any less number that might be allotted to him, and to pay the deposits thereon, and to sign the parliamentary contract and subscribers' agreement, when re-

quired. The Committee allotted him 30 shares; but he did not pay the deposits thereon or do any other act in pursuance of his undertaking. The project proved abortive, and the affairs of the company were ordered to be wound up.

Held, that *A.* was not liable as a contributory, even to the extent of the deposits. *In re Direct Birmingham, Oxford, Reading, and Brighton Railway Company, Capper's case*, 1 Sim. N. S., 178.

7. Motion, that the name of a contributory might be struck off the list, refused with costs: the case being undistinguishable, in principle, from *Uptill's case*. That case observed upon. *In re Direct Birmingham, Reading and Brighton Railway Company, Sticell's case*, 1 Sm. N. S. 197.

8. *Deed of arrangement with creditors.—Trustees of the deed*.—Where a shareholder in a railway company had applied to the Court of Bankruptcy for protection, and had entered into an arrangement with his creditors, under 7 & 8 Vict. c. 70: *Held*, that he could not petition to have the company wound up under the Joint-Stock Companies' Winding-up Act, without serving the petition upon the trustees under the deed of arrangement. *Ex parte Walter, in re Cameron's Coalbrook Steam Coal, Swansea, and Loughor Railway Company*, 3 De G. & S. 2.

9. *Receipt of dividend as final*.—A shareholder in a dissolved railway company had expressed himself satisfied with an account produced to him, and received, in 1847, a second dividend in part return of his deposit, and under the designation of a final dividend, leaving only 22l. of his deposit unreturned. In 1849 he presented a petition to have the company wound up under the act of 1848, when there appeared to be no debts due from the company, nor any assets, except such as might be procured from re-opening the accounts, or recovering from subscribers the amounts unpaid on their deposits: *Held*, not a case for a winding-up order, nor for ordering the petition to stand over to allow an inspection of the accounts of the company. *Ex parte Murrell, in re London and South Essex Railway Company*, 3 De G. & S. 4.

10. *Adoption of transfer*.—Forty shares, called "new shares," were purchased by *B.*'s father, and were by his direction transferred into the names of *A.* and *B.*, without their knowledge. *B.*, after his father's decease, and on becoming his executor, found the certificates of the shares among his father's papers, and, upon the request of the managing director of the company, sent the certificates to him to be exchanged. Instead of being exchanged they were cancelled, and other shares, being old shares, were transferred, in the company's books, to *A.* and *B.*, as upon a sale: *Held*, that, as to the 40 shares, *B.* was properly excluded from the list of contributories, both in his individual character, and also as representative of his deceased father. *In re St. George's*

Steam Packet Company, Pim's case, 3 De G. & S. 11.

11. *Husband and wife*.—A female shareholder in a joint-stock bank married, and her husband received dividends on her shares, signing the dividend warrants per procurator of his wife: *Held*, that he was not entitled to be removed from the list of contributories under the Joint-Stock Companies' Winding-up Act, 1848, although he had not fulfilled the conditions prescribed by the deed of settlement for the purpose of entitling the husband of a female shareholder to become a member of the company. *In re North of England Joint-Stock Banking Company, Burlinson's case*, 3 De G. & S. 18.

12. *Husband and wife*.—Non-compliance with deed of settlement.—The deed of settlement of a banking company provided that no shares should be transferred while any call directed to be paid, remained due on them, and that any transfer contrary to the deed should have no validity either at law or in equity. A legatee of shares, on which a call was due, took a transfer of them from the executors by a deed, to which an officer of the company was a party. The legatee applied for dividends on the shares, but the officer of the company refused payment until the call was paid up. The legatee never paid the call. She afterwards married, and neither she nor her husband ever paid or received anything on account of the shares, nor did anything further on account of them. On the affairs of the company being wound up nine years afterwards: *Held*, that the husband was properly placed on the list of contributories; but it was referred back to the Master to consider whether his name ought to be inserted without that of his wife. *In re North of England Joint-Stock Banking Co., Sadler's case*, 3 De G. & S. 36.

13. *Allottee*.—Non-fulfilment of conditions of subscription.—An allottee, who had paid his deposit on shares in a company which was afterwards completely registered, claimed to be excluded from the list of contributories, under the Joint-Stock Companies' Winding-up Act, 1848, on the ground that a condition expressed on the scrip certificate, that the capital should be 10,000. In 4,000 shares had not been fulfilled; and that 2,600 shares only had been subscribed for: *Held*, that this was not sufficient ground for his exclusion. *In re Universal Salvage Company, Sharps's case*, 3 De G. & S. 49; *In re same, Earl of Minto's case*, 3 De G. & S. 58.

14. *Taking shares on condition of non-liability*.—A publisher furnishing a provisionally registered company with goods, agreed with the chairman to be paid in shares, but so that he should incur no personal liability. Scrip certificates were sent to him accordingly, and the company was afterwards completely registered. He sold the shares. On being required to sign the deed he refused to do so, and took no further part in the affairs of the company: *Held*, that he was properly excluded from the

list of contributories. *In re Universal Salvage Company, Woodfall's case*, 3 De G. & S. 53.

15. *Uncompleted purchase*.—Non-compliance with deed of settlement.—Where a person had entered into an agreement for the purchase of shares in a company, which had been approved of by the company, and a specific performance of which could have been enforced against him, he was *held* liable to be placed on the list of "contributories," although no complete or formal transfer of the shares, according to the deed of settlement, was made before the company stopped payment. *In re North of England Joint-Stock Banking Company, Sanderson's case*, 3 De G. & S. 66.

16. *Commencement of liability*.—The time when, for the purpose of being placed on the list, a contributory became a member, is the time when he entered into a binding contract to take shares. *In re North of England Joint-Stock Banking Company, Sanderson's case*, 3 De G. & S. 66.

17. *Holder of unauthorised preference shares*.—A subscriber for shares in a company on terms of receiving 8l. per cent. on his subscribed capital in lieu of profits, having received a dividend on that footing, cannot effectually resist being placed on the list of "contributories" under the Joint-Stock Companies' Winding-up Act, 1848, on the ground that the deed of settlement did not authorise the issue of such preference shares. *In re Vale of Neath and South Wales Brewery Company, Hitchcock's case*, 3 De G. & S. 92.

18. *Unauthorised sale of shares to company*.—A shareholder in a brewery company sold his shares to one of the directors. His solicitor, through whom the sale was effected, had notice that the purchase was made by the director, with a view of vesting the shares in the company, to whom the director transferred them on the same day on which they were transferred to him. The deed of settlement did not authorise the purchase on behalf of the company: *Held*, that the shareholder was properly placed on the list of contributories, under the Joint-Stock Companies' Winding-up Act, 1848, although seven years had elapsed since the transfer, and it had remained unquestioned during the whole interval.

Semble, that *Monday v. Guyer and Wood v. Rouchiffe*, are not conflicting authorities. *In re Vale of Neath and South Wales Brewery Company, Richmond's executors' case*, 3 De G. & S. 96.

19. *Leave to dispute liability after appointed time*.—Leave given to a person to dispute his liability to be placed on the list of contributories after he had (acting under wrong advice as to the law,) suffered the time appointed for that purpose by the Master to elapse. *In re Liverpool and Manchester Stevedoring and Timber Joint-Stock Company, Holt's case*, 3 De G. & S. 99.

20. *Deposit of shares*.—Shares were deposited by the allottee with creditors as security, and having been called in were ex-

changed by the creditors for others in their own names. The fact that they held the shares as security only, was known to the directors of the company. Upon the company being wound up: *Held*, that the creditors had been properly placed on the list of contributories in respect of the shares. *In re Patent Elastic Pavement and Kamptulicon Company, Price and Brown's case*, 3 De G. & S. 146.

21. *Waiver of provisions of deed as to transfer*.—In a joint-stock company, 50 shares belonging to the company were transferred and accepted by the transferee, and an entry of the transaction was made in the share ledger of the company. By the deed of settlement certain formalities were to be complied with, without which, it was declared that no transfer should have any force either at law or in equity. The formalities had been universally disregarded in the transactions of the company, and were not complied with in this case: *Held*, that there must be taken to have been a universal consent to disregard the provisions of the deed in this respect, and that the transferee effectually became a shareholder as between himself and the shareholders generally. *In re Vale of Neath and South Wales Brewery Company, Walter's case*, 3 De G. & S. 149.

22. *Husband and wife.—Transfer to company*.—By the deed of settlement of a company the husbands of female shareholders might become proprietors, with the approbation of the directors. But husbands who did not apply for or obtain such approbation, were within six months after their marriage to sell their wives' shares, and, on refusal or neglect so to do, were to forfeit the shares for the benefit of the company. The deed also provided, that if the husband of a female proprietor did not obtain the approbation of the directors to be admitted a proprietor, the directors might, and were required, on the application of the husband, to purchase for the company the shares from him at the market price, or such price as they should consider reasonable. The husband of a female shareholder attended a meeting and proposed resolutions thereat. He afterwards applied to the directors to be relieved from his wife's shares, and the directors agreed to purchase them, on the husband making an advance to the company, and taking debentures for the price of the shares, and for the advance. The sale was completed on these terms within six months after the marriage: *Held*, that the transaction was valid, and that the insertion of the husband's name on the list of contributories to the company was properly qualified by restricting his liability to a period preceding the sale. *In re Vale of Neath and South Wales Brewery Company, White's case*, 3 De G. & S. 157.

23. *Summary order for payment of money*.—The share-brokers of a provisionally-registered company, who were also holders of shares, and had signed the company's deeds, borrowed of the directors part of the company's monies, to

enable them to complete a large purchase of shares in the market, and deposited as a security the purchased shares and some of their original shares: *Held*, that the monies borrowed were not due from them as members and contributories of the company, so as to authorize the Master summarily to order them, in that character, to pay the amount under the 66th section of the Joint-Stock Companies' Winding-up Act, 1848. *In re Triang, Reading, and Basingstoke Railway Company, Cox's case*, 3 De G. & S. 180.

24. *Sued in Scotland*.—Proceedings had been taken in Scotland against a member of a joint-stock company, in respect of liability of the partnership: *Held*, a proper case for winding up the company on his petition. *Ex parte Latta, In re Royal Bank of Australia*, 3 De G. & S. 186.

Case cited in the judgment: Spackman's case, 1 De G. & S. 604.

See *Infant*.

CREDITOR.

1. The registered secretary to a provisionally registered company, in pursuance of instructions given to him at a meeting of the members or committee of the company, gave orders to an advertising agent to cause the scheme, &c., of the company to be advertised. The agent executed the orders, and paid for the advertisements; and afterwards claimed, before the Master charged with the winding-up of the company, to be admitted a creditor of the company for the amount paid by him; but he did not know the names of the persons present at the meeting. The Master declined to admit the claim as a proof, because the affidavits in support of it did not establish a debt against any particular persons, or against the whole class of contributories: and the Court, on appeal, confirmed the Master's decision. *In re Direct West End and Croydon Railway Company, ex parte Lloyd*, 1 Sim. N. S. 248.

Case cited in the judgment: Dore v. Gray, 3 T. R. 358.

2. *Leave given to sue*.—A plaintiff in an action at law against a member of a joint-stock company for goods supplied to the company, was stayed by a judge at chambers, at the instance of the defendant, after an order had been made to wind up the company under the Winding-up Act, until after proof of the debt should be made before the Master. The plaintiff at law then went in before the Master, who disallowed the proof. The Court, on motion, gave the plaintiff at law leave to take or prosecute such proceedings at law as he might be advised. *In re Patent Elastic Pavement and Kamptulicon Company, Armstrong's case*, 3 De G. & S. 140.

See *Contributory*, 8.

[To be continued in our next Number.]

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JULY 19, 1851.  
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THE COMMON LAW COMMISSIONERS' FIRST REPORT.

We hasten to lay before our readers as large a portion as space will admit of the recommendations contained in the First Report of the Commissioners appointed to inquire into the process, practice, and system of pleading of the Superior Courts of Law at Westminster.

The advanced period of the Session at which the Report has been submitted to parliament, precludes the possibility of any steps being taken, by legislative enactment, to give effect to the recommendations of the Commissioners during the present year. Perhaps, on the whole, this is hardly to be regretted. Desirable as it undoubtedly is, that all safe and practicable amendments should be brought into operation speedily, it will be more satisfactory and ultimately beneficial to the public, that the numerous and comprehensive changes suggested by the Common Law Commissioners should be digested, considered, and thoroughly understood, before they are embodied in an act of parliament. The interval between the conclusion of the present and the commencement of another Session, will afford an opportunity for discussing in detail the various alterations recommended, of which we propose from time to time to avail ourselves.

For those of our readers whose avocations will not permit the application of time necessary for a perusal of the report, it may be convenient to know, that the plan adopted by the Commissioners has been, in the first instance, to state and consider in regular series all the ordinary steps in an action at law from the commencement to the conclusion, suggesting, at each stage, the alterations in the present practice that seemed in their judgment to be beneficial.

The consideration of the trial at Nisi Prius, involving many questions of importance and difficulty, (and amongst others the admissibility of the parties as witnesses,) we regret to say, is not touched upon in the present report, but is expressly reserved for a separate report. It is to be hoped that legislation on this subject will be suspended until parliament is assisted by the light to be derived from the experience and inquiries of the Common Law Commissioners. In the promised report, too, it may be expected, that the Commissioners will suggest how those delays in the trial of causes which are sometimes the just subject of complaint may be effectually prevented.

The action of ejectment, which is so peculiar and anomalous in its character, is the subject of separate consideration in the present report, and the Commissioners suggest that the proceeding should be materially modified and all that is fictitious in its construction absolutely abolished.

The subject of "costs" is one of those reserved, but the Commissioners have deemed it their duty to state, and have stated in unqualified terms, their opinion upon the subject of the fees paid by suitors at Nisi Prius and at the Judges Chambers,—fees, which they truly state, have been "universally and justly complained of by the profession and the public." In the course of an elaborate and searching inquiry into the duties performed and the emoluments received by those officers who are remunerated by fees paid by suitors, and not compelled to render any account of those fees, the Commissioners ascertained that, independent of the fees for entering a cause and the remanet fees, what are called the *Court fees* in an undefended cause, are about 4l. 1s. 6d. "It is not very clear," (say the Commissioners,) "how these fees are made up, but we collect from

the reports on fees and the evidence before us, that in the Court of Exchequer they are thus distributed:—

Marshal and Associate	£ 4 17 0
[This includes 2s. to the Chief Baron's Coachman and 2s. to the Ushers.]	
Three exhibits in undefended actions	0 6 0
Grier	0 12 0
Jury	0 12 0
Ushers	0 11 0
Court Keeper	0 2 0
Tipstaff	0 1 6
	£ 4 1 6

These Court fees, it appears, are liable to be much increased, according to the number of issues joined, the documents read in evidence, the challenges of jurors, and the orders or certificates granted by the judge, and they vary in all the three Courts.

The dissatisfaction existing in respect of the amount of the fees paid at the Judges' Chambers, the Commissioners declare to be well grounded, and that opinion is strongly fortified by the fact, that in the year 1847 the receipts of twelve of the Judges' Clerks, at Chambers and on Circuit, amounted to the sum of 22,558l. 6s. 4d.; and that in the year 1842, the clerks of the judge who stayed in town and attended Chambers during the Circuit received no less than 2,000l. in six weeks! In reference to the Nisi Prius officers and judges' clerks, the Commissioners thus sum up the result of their inquiry:—

“If the offices which are the subject of this part of our report are to remain upon their present footing, it is clear the fees paid in respect of them ought to be at once revised.

We find the same officers, in different Courts and on different Circuits, receiving different amounts for the performance of the same duties. We find, in some instances, payments made for services not rendered at all, in others payments made to the officers nominally for services which are in fact rendered by the legal advisers of the parties. We find large sums paid in respect of undefended causes, which are disposed of in a few minutes, whilst the same amount, or little more, is paid in respect of causes lasting for hours and in respect of which the officers render really laborious services. The gross amount of the fees, also, produces much larger emoluments than are necessary to secure the services of efficient and capable persons. Such a revision, however, would fall far short of the reform which we deem necessary.

“We think that all these officers stand on an unsatisfactory footing, both as to their

tenure of office and the mode of their payment.”

The Commissioners then proceed to recommend that all the offices mentioned (except those of the Marshal on Circuit and the clerk who attends personally on each judge,) should be held during good behaviour, and not, as at present, during pleasure; that all these officers should be paid by salaries and not by fees, and that the fees hitherto received by these officers be altogether abolished.

The Appendix to the Report contains a summary of the recommendations contained in it and the forms which are suggested, the returns obtained from the officers of the various Courts, and the minutes of evidence. The witnesses examined, and whose evidence is printed, consist of the following persons:—The Hon. T. Deane, formerly Marshal and Associate and Clerk at Nisi Prius of the Queen's Bench; The Hon. Claude Wilde, Associate and Marshal of the Common Pleas; Robert Pollock, Esq., Associate and Marshal of the Exchequer; The Hon. Richard Denman, Clerk of Assize and Associate on the Home Circuit; Robert Marshall Straight, Esq., Deputy Clerk of Assize on the Home Circuit; W. H. Palmer, Esq., Under Sheriff for some of the Southern Counties; James Barchard, Esq., Under Sheriff of Middlesex; Mr. Richard Hawkins, Law Clerk, Treasury Department; Mr. Richard Morris, Assistant Master of the Court of Exchequer; and Messrs. William Clark, James Taylor, and James Edward Saunders, Clerks to the Judges.

In the expediency of some few of the alterations proposed by the Commissioners, and the sufficiency of the reasons stated for adopting them, we confess ourselves unable to concur, and shall venture, upon a fitting opportunity, humbly to state the grounds upon which we deem them objectionable. It is impossible, however, after perusing the report, not to feel that it is the work of a body of able and experienced men who have given their minds to the discharge of an onerous and important duty, and for so much performed that duty ably and honestly. That alterations so numerous and extensive should meet universal approval, is hardly to be expected. Many consider that the Commissioners' recommendations go too far, whilst others come to the conclusion that the changes fall short of what is desirable. The last objection we should have expected to have heard of, that put forward in the columns of a daily news-

paper of large circulation, in which the Commissioners are reproached for attempting to amend the present system of procedure, instead of substituting another. According to this writer's view, the Commissioners were wrong in availing themselves of the ancient foundations, even when those were solid and sufficient to support the new superstructure. The experience of ten centuries was to be used only for the purpose of rejecting all that had been created by its labours. We are satisfied that no considerable section of the profession concur in this notion, and that the principle whimsically suggested as a ground of complaint to the Commissioners' Report, is peculiarly calculated to recommend it to the approval of those best qualified to estimate its value.

COMMON LAW REFORM.

RECOMMENDATIONS OF THE COMMISSIONERS.

Writ of Summons.

1. That all personal actions shall be commenced by writ of summons, in the form set forth in Appendix B. No. 1, when the defendant is residing, or supposed to reside, within the jurisdiction.

2. That it shall not be necessary to mention any form of action in the writ.

3. That a plaintiff may at any time during the six months from the issuing of the writ of summons issue a concurrent writ, to be served within the same period as the first writ, to be marked with the word "concurrent" and with the date.

4. That there shall be no alias or pluries writ; but that the original or concurrent writ of summons may be renewed at any time before its expiration, for six months from the date of renewal, and so from time to time during the currency of the renewed writ, by having it marked with a seal or stamp bearing the date of the day, month, and year, to be kept for that purpose at the office. And that a writ so renewed shall remain in force from the date of issuing of the original writ, to save the statute of limitations, and for all other purposes; provided that a writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction, and a writ for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

5. That the writ of summons may be served in any county.

6. That the service of the writ of summons, wherever practicable, shall be personal; but that the plaintiff shall be at liberty to apply from time to time, if necessary, on affidavit, to the Court, or a judge, who may, if satisfied

that the writ has come to the knowledge of the defendant, or that he wilfully evades service, order that the plaintiff be at liberty to proceed as if personal service had been effected.

7. And that when any defendant (being a British subject) is residing out of the jurisdiction, it shall be lawful for the plaintiff to issue a writ of summons in the form set forth in the Appendix B. No. 2, which shall bear an indorsement that it is for service out of the jurisdiction, and in which the time for appearance shall be regulated by the distance from England of the place where the defendant resides; and that it shall be lawful for the Court or a Judge, upon being satisfied by affidavit that the writ was served upon the defendant, or that the writ came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the jurisdiction in order to defeat and delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in such manner and subject to such conditions as to such Court or Judge may seem fit; but that the plaintiff shall be required to prove the amount of the debt or damages, either before a jury upon a writ of inquiry, or before the Master, as a judge may direct, as a condition precedent to his obtaining judgment.

8. That the proceedings against foreigners out of the jurisdiction be the same as those against British subjects, save that instead of the form in Appendix B. No. 2, there shall be used for that purpose the form Appendix B. No. 3: provided that the substitution of either of such forms for the other of them, or for the form in Appendix B. No. 1, shall not be an objection to the plaintiff's proceedings, but that any mistake in that respect may be amended by a Judge *ex parte* without costs.

9. That any affidavit for the purpose of enabling the Court or a Judge to direct proceedings to be taken against defendants out of the jurisdiction may be sworn before any Consul-general or Consul appointed by her Majesty at any foreign port or place.

10. That the writ of *distringas*, whether for the purpose of compelling appearance or for proceeding to outlawry, shall be abolished.

11. That it shall remain obligatory on the plaintiff to make the indorsement upon the writ prescribed by the rule of Hilary Term, 2 W. 4, rule 2, unless he adopts the more special indorsement hereinafter mentioned.

12. That in all cases where the claim is for a debt or liquidated demand in money, with or without interest, arising upon a contract, express or implied; *e. g.*

On a bill of exchange, promissory note, or cheque, or other simple contract debt;

Or, on a bond or covenant under seal;

Or, on a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt or penalty;

Or, on a guarantee, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note;

The plaintiff shall be at liberty to make a special indorsement of the particulars of his claim in the form or to the effect contained in Appendix B. No. 4.

Appearance and Judgment for Non-appearance.

13. That entering appearance by the plaintiff according to the statute be abolished.

14. In case of non-appearance, where the writ is indorsed in the special form, That the plaintiff shall be at liberty, on filing the affidavit of service or Judge's order to proceed, and a copy of the writ, at once to sign final judgment, (which may be entered in the form given in the Appendix B, No. 5, and on which no proceeding in error shall lie,) for any sum not exceeding the sum indorsed on the writ, with interest at the rate specified, if any, to the date of the judgment, and a sum to be fixed by the Masters for costs, unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way; but execution shall not issue until the expiration of eight days from the last day for appearance.

15. In case of non-appearance, where the writ is not indorsed in the special form, That a declaration may be filed, indorsed with a notice to plead in eight days in all cases, without reference to whether the defendant does or does not reside within twenty miles of London, and judgment by default may be signed at the expiration of the indorsed time to plead, according to the present practice; and in the event of no plea being delivered, where the cause of action mentioned in the declaration is for any of the claims which might have been inserted in the special indorsement on the writ before proposed, the judgment shall be final, and execution issue for an amount not exceeding the amount indorsed on the writ, with interest at the rate specified, if any, and the sum fixed by the Masters for costs as before mentioned, unless the plaintiff claim more, in which case they must be taxed; and in such case the plaintiff shall not be entitled to more costs than if he had made the indorsement, and signed judgment upon non-appearance. Provided that in all cases where a writ has been indorsed in the special form, no further particulars need be delivered with the declaration.

16. That the defendant shall be at liberty to appear at any time before judgment, and after such appearance he shall be entitled to have all pleadings subsequent to his appearance delivered to him or his attorney; but in the event of his appearing after the time specified in the writ, or in any rule or order to proceed as if personal service had been effected, he shall give notice of appearance to the plaintiff, to entitle him to such delivery.

17. That the appearance, if in person, shall give an address, and at the address so given it shall be sufficient to leave all pleadings and notices; and in the event of such address not being given the appearance shall not be received, or if the address be illusory or fictitious, the appearance shall be irregular, and may be set aside on application to a judge.

18. In the case of several defendants, some of whom appear and others not; where the writ is indorsed in the more special form, That the plaintiff may, if he think fit, sign judgment against the non-appearing defendant or defendants alone, and issue execution accordingly, abandoning his action against the other defendants before declaration. Or the plaintiff may, if he prefer it, declare against the defendants who have appeared, suggesting the judgment obtained against the others, and in that case the judgment against the non-appearing defendant or defendants shall operate as at present; or if thought proper the plaintiff may at once be allowed to issue execution against the defendant who suffers judgment by default, proceeding with the action against the other defendants; provided that such defendant or defendants may plead satisfaction obtained by the plaintiff against any other defendant or defendants since the action commenced.

Joinder of Parties.

19. That the joinder of too many plaintiffs be not fatal to any action, but that the plaintiff or plaintiffs entitled may recover.

20. That the defendant, in an action in which there is more than one plaintiff, on pleading a set-off, may obtain the benefit of the set-off on proving either that all the parties named as plaintiffs are indebted to him, notwithstanding that one or more of such plaintiffs was or were improperly joined, or on proving that the plaintiff or plaintiffs who establish their right to maintain the action was or were indebted to him.

21. That it shall be competent for the defendant to compel by subpoena the attendance of one or more of several co-plaintiffs as a witness or witnesses at a trial, and to call as a witness any of them who may appear to have been improperly joined.

Note.—This will be unnecessary if it shall be resolved to make the parties to a suit competent witnesses.

22. That the non-joinder of a person as plaintiff in an action on contract shall be a variance to be amended at the trial by the judge, if it shall appear to him that such non-joinder was not for the purpose of obtaining an undue advantage, and that injustice would not be done by amending, and that the omitted party consent to be joined as a co-plaintiff; provided, however, that no such amendment shall be made if the defendant shall at or before the time of pleading have given written notice to the plaintiff that he objects to such non-joinder.

23. And in case such notice be given, or any plea of non-joinder be pleaded, the plaintiff shall be at liberty to amend the writ and other proceedings by adding the name of the person alleged to be improperly omitted as plaintiff, on payment of costs; and with liberty to the defendant to plead *de novo*.

24. That where too many defendants are joined in an action on contract, the plaintiff shall be entitled to recover against such defend-

amendments to appear as the liable, and that the other defendants shall be acquitted, with like provisions respecting set-off and evidence as in the case of too many plaintiffs.

25. That, upon a plea in abatement of non-joinder of a co-defendant as defendant, it shall be competent for the plaintiff to amend his writ and declaration, serve the amended writ on the added defendant, and proceed against both; and that the date of such amendment shall as between the added defendant and the plaintiff be considered for all purposes the commencement of the suit.

26. In such case, if upon the trial of the case it shall appear that the added defendant was jointly liable with the original defendant, the original defendant shall be entitled to the costs of the plea in abatement and amendment; but if at the trial it shall appear that the plaintiff cannot maintain his action against the original and added defendants, but can maintain his action against the original defendant alone, the added defendant shall be acquitted, and the plaintiff shall be entitled to recover against the original defendant, with costs, including those of the plea in abatement, and such costs as the plaintiff may have to pay the added defendant.

27. That in any action brought by a man and his wife for an injury to the wife in respect of which she is a necessary plaintiff, there may be joined claims by the husband alone: Provided that in the case of the death of either plaintiff, the suit, so far only as relates to the causes of action, if any, which do not survive, shall abate.

Questions raised by consent, without pleading.

28. That the parties, after writ issued, may, by leave of a judge, state any question for trial which they may think fit, without any pleading, and with or without an agreement, that according as it may be determined an agreed sum of money or a sum to be ascertained by the jury shall be paid, and as to payment of costs.

29. That upon such finding judgment may be entered and the proceedings recorded.

30. That a question or questions of law may be stated for the opinion of the Court without pleading, and with similar agreements as to money and costs to be recovered, and with or without an agreement to bring error, which may be brought when agreed.

PATENT LAW AMENDMENT.

A VERY voluminous Report of the Select Committee of the House of Lords, on the several bills for amending the Law of Patents, has been published. The Committee decided against the expediency of the two bills then before the House, and recommended a new bill, which was speedily passed by the Lords, and now waits for reading in the Commons.

The profession and the public are equally interested in the abolition of the dilatory and expensive forms and *large fees of office* which belong to the present practice. The new act, we trust, will not only relieve the ingenious Inventor from expense and delay, but protect the public from fraud and imposition; and, "though last, not least," in our estimation, prevent the employment of unqualified persons in this important branch of legal business. The obtaining a patent is often as important as obtaining an act of parliament, and in order to ensure the regularity of the proceedings and the responsibility for their legal accuracy, duly qualified practitioners should alone be employed.

It is high time that the encroachments on the profession should be resisted.

REGISTRATION OF ASSURANCES

PETITION OF THE INCORPORATED LAW SOCIETY.

THIS Petition contains the following statements:

That the Incorporated Society of Attorneys, Solicitors, and Proctors comprises in its body a large number of practitioners who have to deal with the titles to estates and the transfers of land, in all their practical details; and the Petitioners have therefore felt themselves called upon to lay before the House some of the results of that experience.

That the Petitioners are aware it has been insinuated that the objections of solicitors to the proposed measure originate in self-interest. It is the unanimous opinion of solicitors, that the proposed measure, though it may materially diminish the number of transactions relating to land, will increase their fees on each, and, in a pecuniary point of view, will be beneficial to them; but they object to it on behalf of their clients, whose interests they desire to protect.

Supposed evils to be remedied.—That the bill contains no preamble, stating the specific evils intended to be remedied, but the Petitioners learn, from other sources, that five classes of evils are supposed to result from the non-registration of assurances, namely, 1st, Those arising from the suppression of deeds and the expense of guarding against such suppression; 2nd, Those connected with the system of "taking," by which means incumbrances are sometimes defeated; 3rd, Those consequent on the loss of deeds by fire or other casualty; 4th, Those resulting from the doctrine of actual or constructive notice of charges affecting lands; and 5th, The expense attending the investigation of titles and transfer of land, occasioned by the length of abstracts, the difficulty of identifying the property dealt with, and of obtaining access to deeds in the

possession of third parties, and the expense of attested copies.

Suppression of Deeds.—That the Petitioners are enabled to state, as the result of the experience of a large proportion of solicitors extensively engaged in the transfer of real property, that instances of loss arising from the suppression of deeds are extremely rare; and they believe that this fact is now admitted by all, or nearly all, who have taken an active part in promoting the present measure; and that where due care and caution are observed by the solicitor, it is next to impossible for a fraudulent suppression of deeds to take place, to the injury of his client.

Expense of guarding against suppression.—That the Petitioners feel confident that much expense is not incurred in guarding against the danger of a fraudulent suppression of deeds under the present system; that if the fact were capable of proof, such proof must be found in the bills of costs of solicitors; and the Petitioners believe that no such evidence, or any other deserving the name, has at any time been given, either before the Real Property Commissioners, or elsewhere.

System of Tacking.—That the system of lending money on second mortgages, where the lender has not the custody or control of the title-deeds, is much discouraged by respectable solicitors, and is fortunately of very infrequent occurrence in this country. The system has prevailed to a great extent in Ireland, where facilities are afforded by the registration of deeds; and the Petitioners think it probable that those facilities may have tended, in no small degree, to produce that most deplorable state of things in Ireland, which obliged the legislature to establish the Encumbered Estates' Commission.

Loss by fire.—That the loss of deeds by fire or other casualty very rarely occurs; there being in nearly every considerable mansion throughout the kingdom a fire-proof muniment-room, and, in smaller residences, an humbler but safe depository for title-deeds; and it has been the practice for noblemen and gentlemen not possessing such facilities, to deposit their deeds in fire-proof rooms belonging to their bankers or solicitors.

Expense of fire-proof rooms under proposed measure.—That the expense of constructing fire-proof rooms necessary for the preservation, with convenient classification, of all registered deeds relating to all property throughout the kingdom, extending, on a moderate computation, to 300,000 deeds in every year, must amount to a very enormous sum.

"Notice."—That the Petitioners are apprehensive that the proposed measure will not satisfactorily remove the objections felt to the existing law, as administered in the Court of Chancery, with reference to questions of what constitutes "Notice," and the effect of "Notice;" and that questions of this nature, which now so frequently occupy the anxious attention of Courts of Equity, and the cautious conveyancer, will, under the provisions of the bill,

arise as questions of fraud, and cause an equal amount of anxiety.

That as there is reason to believe that the clause in the bill relating to "Notice" is considered by some as one of the most important features in the proposed measure, the Petitioners venture to give the following illustration of their view of its practical inefficiency: thus, If A., having executed an equitable charge on his estate, sell to B., and B. afterwards agree to sell to C., who, before he completes his purchase, receives notice of the equitable charge, the question whether B. could make a good title to C. would, under the existing state of the law, depend on the question whether B. had notice of the equitable charge before he completed his purchase; and under the proposed alteration the same question would practically arise, if the instrument were not registered; for if B. had such notice it was fraudulent in him to attempt to defeat the equitable charge, and being fraudulent, his conveyance, notwithstanding the proposed act, would not prevail against the equitable charge, cases of fraud being excepted.

Expense of attested copies.—That undoubtedly cases have occurred where vendors have exposed themselves to considerable costs by entering into contracts under which they have been obliged to furnish attested copies of deeds not in their own possession, or which, relating to other property, they could not part with; but these cases have been the result of great improvidence in framing the contract, and ought to be mentioned rather as evidence of very culpable imprudence on the part of a vendor, than as an illustration of a defective state of the law.

Covenants for production of deeds will still be necessary.—That the proposed measure will not enable a purchaser to dispense with covenants for production of original deeds, retained by the vendor, or by any other party; for a purchaser must have the means of proving his title in a Court of Law, and this he cannot do by means of the deeds in the registry, for they of course cannot be removed from the office. The deeds in the registry might indeed be produced on a subpoena, by a clerk from the office, but this would involve the expense of his attending the assizes, and the risk attendant on the withdrawal of them, for an indefinite period, from a place of absolute security.

Erroneous impressions as to the effect of the proposed measure.—That the petitioners have observed that an impression very generally prevails, that the present bill proposes to assimilate, to a great extent, the transfers of land to the transfers of stock in the public funds, or shares in railway companies; but such an impression is altogether founded in error. The bill has no tendency whatever in that direction. Under the present system, every successful purchaser or mortgagee of an estate requires to be satisfied that the title is a marketable one; and, for that purpose, his solicitor must have an abstract of title delivered to him, show-

ing all dealings with the property for sixty years past, unless special restrictions have been imposed by the contract: he must compare the abstract with the original deeds to ascertain its accuracy;—he must require satisfactory evidence of identity, that is, that the lands purchased are wholly included in the deeds abstracted;—he must call for evidence of heirships, in cases where the property, during the sixty years, has passed by descent;—he generally, if the property be considerable, consults counsel on the title, as disclosed by the abstract and supported by the evidence, and he prepares the conveyance; and, if the purchaser sell the estate the following year, the title must again be investigated by the solicitor to the new purchaser, as strictly as if no previous investigation had taken place. And this state of things will not be changed, in any respect, if the present bill pass into a law; all the expenses must be incurred as before, and the further expense of searching the register for all deeds and documents affecting the property, and of preparing a duplicate of the conveyance, and transmitting it to be registered, besides the registrar's fees on registration.

Objections to the proposed system: expense and delay.—That the proposed system of registration will not only involve the necessity of a duplicate of every deed, and the transmission of both parts of such deed to the registrar from every part of the kingdom, and the return of one part, certified by the registrar, to enable the owner to show his title in an ejectment or other action, and in cases of sale or mortgage, but a solicitor must, in every case, ascertain what deeds and documents affect the lands intended to be dealt with, and for that purpose must examine the Titles' Index, the Alphabetical Index of Grants, the Testators' and Intestates' Index, and the Bankrupts' and Insolvents' Index, which three last are to be Alphabetical Indexes of all the Testators, Intestates, Bankrupts, and Insolvents in the Kingdom. This must be an expensive operation where the solicitor resides in London; and every country solicitor must employ a town agent, imperfectly acquainted with the subject, or put his client to the expense of a journey to London, to make these examinations and searches.

Objections to Middlesex registry applicable to the measure.—That the proposed bill appears to the Petitioners to be open to nearly all the objections which have been so long and so universally felt to the system of registration adopted in the Middlesex registry; and to be open to the further serious objection, that it requires the whole deed to be registered, and rendered liable to inspection by curious and impertinent eyes, whereas the memorial in Middlesex contains little more than the names of the parties to the deed, a description of the premises, and to whom conveyed, and does not usually state the consideration of the trusts.

Titles will be longer.—That titles will not be shorter in consequence of registration; but rather will be longer, inasmuch as every deed

that has once been registered, must always remain on the title, and consequently be inspected; and the purchaser or mortgagee, who desires to have the advice and opinion of counsel on the title, must have an abstract of all the deeds to lay before counsel, or must lay copies of all the deeds before him.

Necessity of a caveat in every case.—That to prevent the valid registration by a third party of any deed affecting a property in the interval between the search by the purchaser or mortgagee and the completion of the purchase or mortgage, every intended purchaser or mortgagee must take the precaution and incur the expense of entering a caveat the moment he has completed the search, and of subsequently removing it when he presents his deed for registration, and even this precaution will have no force or effect as against the bankruptcy or insolvency of the vendor or mortgagor.

No intimation of extent of districts.—That it is proposed by the bill to leave it entirely in the discretion of the registrar, with the concurrence of persons to be appointed by Her Majesty, to divide England into districts, and contains no rules, or advice, or suggestions, to guide, or assist, or control him in the exercise of this discretion, and the public are consequently left entirely without information as to the extent of the districts, whether they are to be very large districts, similar to the several circuits of the judges of assize, or to resemble edwuty or parish districts. The discretionary power is not extended to Wales, which cannot therefore be divided, and this circumstance leads to the inference that the districts contemplated will be of similar extent.

Peculiarly injurious to small owners.—That a very large proportion of the property of this country is held by small proprietors, of the class of yeomen and shopkeepers, and of that proportion a considerable part is in mortgage. Experience shows that individuals in that class of life practise the most persevering industry, rigid economy, and self-denial, in order to become the owners of the house, or the cottage and small piece of land they occupy, or which, from other causes, may have become an object desirable to them to possess. Even when their means are sufficient to complete their purchases without borrowing part of the money on mortgage, the requirements of their trade or their families frequently render a loan on security of their little property necessary. This class, forming numerically by far the greater proportion of those who will be affected by the bill, can ill-afford the additional expense of registration, for which they do not ask. It is greatly to be feared that the effect of the bill will be, in a great measure, to destroy this highly deserving description of owners, or at all events, by throwing additional impediments in their way, to discourage them from acquiring real property, a consequence to which, in a national point of view, there appear to your Petitioners to be the most serious objections.

Business of the office will be transacted by inferior clerks.—That assuming that 300,000

deeds are annually registered, and that there are 300 working days in the year; the average number of deeds brought into the registry daily will be about 1,000; and 1,000 duplicates will have to be examined, corrected, and certified; and each deed, as the completion of a transaction, must be preceded by an examination of the registry, from the period of its first commencement, and certificates must be granted of the result of such examination: and it appears to the Petitioners physically impossible that such duties can be performed by, or under the efficient superintendence of, one registrar, and one, or even ten, assistant registrars. The practical consequence, therefore, will be, that the accuracy of the register will depend almost altogether on the accuracy of inferior clerks, of very limited knowledge and ability, and errors seriously affecting the validity of titles will inevitably be of very frequent occurrence.

Suggested amendments if the bill pass.—That if the proposed measure should pass into a law, the Petitioners submit that judgments in ejectment, whereby a particular estate may be extinguished, should be capable of being registered; and that some more effectual protection than has been proposed should be given to devisees under wills, who may be abroad, or infants, or lunatics, or ignorant of the existence of the will, against the acts of the heir; and some modification of the enormous responsibilities which solicitors may incur, in case of any accidental omission in the statements which the registrar may require from them.

Information should be limited to parties entitled to it.—That unless the register be so constructed as to disappoint impertinent curiosity, the mischief will be insupportable; and especially it ought to be closed against the expectant and in experienced heir, and the class of men who become rich by preying on thoughtless reversioners. Nevertheless, the Petitioners do not find in the bill any satisfactory provisions to prevent the private trusts of family arrangements and marriage settlements being extracted and published in the daily and weekly papers, as unfortunately it has been too much the practice to do with the wills of public or wealthy men.

That the petitioners have not found that any interest is taken in the proposed measure by the public at large.

That if the House in its wisdom should determine on the introduction of a general system of registration, of assurances into this country, the Petitioners most earnestly and anxiously submit that it will be expedient, on a matter of such importance, involving consequences so serious, to refer the proposed measure to a Select Committee of the House;—the bill, in its present shape, altogether differing in most important points of principle, from the recommendations of the Real Property Commissioners, and there not having been time for its careful examination by the members of the legal profession, since its introduction into the House.

That the Petitioners also submit that it will

be expedient to make the experiment gradually, by including one division of the country only in the present bill, as, for instance, the County of Middlesex, and afterwards extending the operation of the measure, should it be found to work satisfactorily.

THE COUNTY COURTS' EXTENSION BILL.

THE BAR AND THE ATTORNEYS.

WE think it is much to be regretted on the part of the Bar, that a few of its members have induced the Attorney-General to claim—1st, exclusive audience in the County Courts in cases above 20*l.*; 2ndly, to prevent one attorney to act as the agent of another; and 3rdly, to enable a barrister to receive his instructions personally from the suitors, without the intervention of an attorney.

The two first propositions were strongly opposed by several independent members of the House, and the learned Attorney was defeated on both. The last he succeeded in carrying, and we understand that many of the attorneys in the country do not object to this alteration. But for the ultimate credit of the Bar, we think that the permission to communicate directly with suitors, is both a dangerous and inconvenient privilege. Is the barrister or his clerk, or some other unqualified person to "get up the case?" Is he to take the instructions, investigate the facts, serve the notices, see the witnesses, and issue and serve subpoenas; or is the bailiff of the Court to perform all or any of these services?

The barrister must beware of acting as an attorney whilst the 6 & 7 Vict. c. 73 remains in force; and he must also beware of the fate of that member of one of the Inns of Court, who, taking the profits of an attorney as well as a barrister, was disbarred, and seeking to be re-admitted as an attorney was rejected by the Court of Queen's Bench. It is lamentable that any portion of the Bar should subject themselves to such unseemly contentions. We are persuaded they will neither promote their honour nor add to their emoluments by the privileges they claim. Their interest, as well as their dignity, would be better consulted by relying on the prudence and self-interest of attorneys to retain them whenever the importance or difficulty of a case justified the aid of counsel.

It must be recollected also, that whilst attorneys are responsible to their clients for negligence or want of skill, there can be no remedy against a barrister for any breach of duty however flagrant.

NOTICES OF NEW BOOKS.

The Judges of England; with Sketches of their Lives, and Notices connected with the Courts at Westminster from the time of the Conquest. By EDWARD FOSS, F.S.A., of the Inner Temple. Volumes III. and IV. London: Longman & Co. Pp. 551; 501.

THE profession, in all its branches, as well as the reading public, must heartily welcome the appearance of these further volumes of Mr. Foss's important work on "the Judges of England." The two volumes now published comprise biographical notices of no less than 473 of the judges, who presided over our Superior Courts of Common Law during a period of 213 years, from the commencement of the reign of Edward I., in 1272, to the end of the reign of Richard III., in 1485. The two former volumes extended over upwards of two centuries, and included 580 judges, who held office during the eight reigns, beginning with William I. and ending with Henry III. The third volume is devoted to the reigns of Edward I., II., and III., and the fourth to the reigns of Richard II.; Henry IV., V., and VI.; Edward IV. and V.; and Richard III.

A comprehensive survey is taken by Mr. Foss of each reign, and then follow the Biographical Notices of the Judges. These historical summaries of the state and progress of the profession of the Law, reign by reign, are peculiarly valuable, comprising a concise statement of every important fact or remarkable incident, with acute discussions of the various doubts and important points which arise in the course of the narrative.

In the earlier sketches Mr. Foss states he derived his principal facts from the publications of the Record Commissioners; but as he advanced in his work, the materials for selection have become more abundant, and he acknowledges the aid of many friendly communications. A grateful acknowledgment is made to Lord Langdale, which we shall have occasion to notice in the Biography we are preparing of that eminent Judge. We can firmly rely that nothing has been stated for which there is not adequate authority, and all the details may be referred to with entire confidence of their trustworthiness.

We shall be unable, until the close of the Session, to notice the Biographical Sketches in these volumes, and, indeed, for the present must confine ourselves to the "Survey"

of the three reigns comprised in the third volume. In reviewing the reign of Edward I., Mr. Foss observes, that by the adoption of the improved system founded on the charters of John and Henry III., with the complete establishment of a separate Court for the trial of Common Pleas, distinct from those devoted to the hearing of Pleas of the Crown and matters relating to the Revenue, and by the extensive judicial improvements introduced by King Edward, a new era in the administration of the Law may be said to have commenced.

Although, as the author remarks, the three Courts of King's Bench, Common Pleas, and Exchequer, had been formed out of the Curia Regis before the end of Henry III., it is probable the precise duties of each had not been fully defined.

"The Court of Common Pleas," he says, "was always held, according to the provision of Magna Charta, 'in aliquo certo loco,' which in this reign was at Westminster. But the Courts of King's Bench and Exchequer were frequently removed, according to the urgency of the time, to different localities; and the Abbreviatio Placitorum mentions several places where the judges of the King's Bench occasionally sat.

"In 5 & 10 Edward I., 1277-1282, the King's Bench and the Exchequer were removed to Shrewsbury, when the king unfurled the royal banner against the Welsh. For seven years, from 26 to 33 Edward I., 1298-1305, they sat at York; during which period, by the statute Articuli super Cartas, 28 Edward I., it was enacted, 'that the chancellor and the justices of his bench should follow the king, so that he might have at all times near unto him some sages of the law, who might be able to order all such matters as should come into the Court at all times when need should require.'"

And further on, Mr. Foss notices that.

"Even in this reign we have clear evidence that common pleas still continued to be heard in the Exchequer. In 5 Edward I. the king addressed a writ to the barons of that Court, prohibiting them from holding a certain plea between private parties then before them, or any other common pleas contrary to the tenor of Magna Charta. This was repeated in the Statute of Rutland, 10 Edward I., 1282, whereby, after stating that pleas were taken in the Exchequer, which did not concern the king and the officers of that Court, by which not only the king's pleas but the causes of the people were unduly protracted and impeded, it is expressly enacted that no plea shall be holden there, unless it specially concerns the king or the said officers. Again, in the Articuli super Cartas, 28 Edward I., 1300, a similar provision was introduced:—and so difficult was it entirely to stop the practice, that the prohibition was renewed by a royal ordinance two years afterwards.

"The Court was generally held at West-

minster, but some instances occur during this reign of its being held in other places. In Michaelmas, 8 Edward I., it sat at Shrewsbury; in 18 Edward I. it was ordered to be transferred to the hustings of London, and in the 26th year the king caused it to be removed to York, commanding the sheriff to fit up the castle hall with a square chequer-board and seats for the treasurer, barons and officers, with a bar for those who attend to plead there."

Passing by for the present the account of the Chancellors and Chief Justices, the Judges and Barons, and Justices itinerant, we were disposed to pause upon the curious investigation of the origin, duties, and powers of the Justices of *Trailbaston*; but we must reserve that topic for a separate article for our antiquarian readers in the Long Vacation. The researches regarding the Masters in Chancery; the Attorney and Solicitor-General, the Serjeants-at-Law, and Counsel, must also be deferred.

The entire freedom of the Judges from all control or influence either from the Sovereign or the nobility, now long and firmly established, forms a happy contrast with their ancient state; and Mr. Foss points out that in the correspondence of the time of Edward I., as exhibited in the various appendices to the Reports of the Deputy Keeper of the Public Records, many instances appear of interference with the Judges in reference to private suits by princes, nobles, patrons, and friends. Mr. Foss observes, that any one of these would "justly excite the indignation of a modern member of the Bench. The influence which these recommendations would have would of course vary with the dispositions of the receivers; but there is too much reason to believe that a very general corruption prevailed."

"*Westminster Hall*," observes our author, "is mentioned for the first time in the reign of Edward II. as the place where the Lord Chancellor held his sittings, and the particular part of it is described as the *magnum banicum*;" and at this era Mr. Foss also notices some early instances of the exercise of the Chancellor's jurisdiction:—

"The passage occurs in the record of the appointment of Walter Reginald, Bishop of Worcester, as chancellor, in July, 1890; but, as it is followed by the words, '*ubi Cancellarii Regis sedere consueverant*,' we are left to imagine when the practice first commenced. Another record, in the 19th year of the reign, makes the earliest mention of the marble table, '*Tabulam Marmoriam*,' at which he sat in the Hall. That it was the custom to seal the writs there appears from the entry, in 11 Edward II.,

of the delivery of the Great Seal, on the retirement of Chancellor Sandale, to the Master of the Rolls and two clerks of the Chancery, who, it is said, '*dictum magnum sigillum in magna aula Westm. hora tertia aperuerunt, et inde brevia consignarant*.' It may be presumed, therefore, that the matters which were referred to him, or to his temporary substitutes, were heard in this place.

"The rolls of parliament, besides innumerable instances of petitioners being referred to the Chancery for writs to meet their complaints, contain various entries showing that parties were permitted to sue there; and that it had the power of granting remedies which could not be obtained in the other Courts. Writs are frequently directed to be issued to other judges to see that justice be done; and in some instances the answer to the petition is '*sequeretur per legem communem*.' But as early as the second year of the reign a distinction appears to be taken; by the complainant being refused any redress to one point of his petition, because the king's right was clear, but as to another he is told '*sequeretur in Cancellaria*.' This form frequently occurs; and sometimes it is followed by the still stronger terms. '*et fiat ei justitia secundum consuetudinem Cancellaria*,' and '*fiat ulterius justitia in Cancellaria*,' or words to the same effect. On one occasion a party is referred to the Chancery, because she '*non potest juvari per communem legem*;' and on another the direction is '*veniat in Cancellaria et ostendat ius suum*.'

"All these seem to evidence the commencement of that peculiar and separate jurisdiction which now distinguishes the Court. The references almost invariably arise upon complaints made to 'the king and his council' in parliament; but there is one instance, in 9 Edward II., of a petition to the chancellor himself, who directs a writ of *supercedas*, as prayed."

In the second year of the reign of Edward III. the Chancery was held at York, where the King's Bench and Exchequer were then established.

"It seems also to have been there throughout the seventh year. But in all the remainder of the reign it appears to have been permanently fixed in London and Westminster. The place of its sittings, in the latter, is invariably in the Great Hall, 'at the marble seat where the chancellors were accustomed to sit;' and in the former, was principally in the Chapter House of the Friars Prebichete, or Friars of Mount Carmel, in Fleet Street; being occasionally varied from circumstances now unknown, or for the convenience of the holders of the Seal. Thus we have one instance of seating at the House of Commons, another at the New Temple, and two at Beskyng Chapel, near the Tower. "I have already shown, in the survey of the preceding reign, the commencement of the practice of a separate reference to the Chancery. (The Rolls of Parliament, and other of

cords, prove that the same course continued under Edward III.; and that the equitable jurisdiction of the chancellor, if not completely established, was practically recognised in the course of this reign, seems to be generally acknowledged. There is no doubt that there was, at this time, a regular *Court of Chancery*; that it was held in Westminster Hall, at the marble stone, or marble chair; that 'the chancellor usually sat there, among the clerks of the Chancery;' and that, when so sitting, he was said, to be 'in plena cancellaria.' There is an instance, in 44 Edward III., of all the judges of both benches coming into Chancery to debate as to the widow of a grantee of the crown being entitled to livery for her son, who was under age. In a case, also, in 17 Edward III., the chancellor, Parning, brought down the record in a suit from Chancery, into the Court of King's Bench with his own hand."

The sittings of the King's Bench and Common Pleas, in the reign of Edward III., are thus stated:—

"The judges of the King's Bench cannot be so distinctly traced during this reign as those of the Common Pleas, no such means of evidence existing as is afforded by the fines levied in the latter Court. The number at the commencement was certainly three, afterwards increased to four; and I am much inclined to think that they never exceeded that number, and that both Hambury and Edenham were removed long before I have felt justified, in the subsequent columnal list, in placing a successor to either of them. Of Brundish and Faunt so little appears, that I have many doubts of their having ever sat on this bench. A question may also be raised whether some judge has not been omitted; for it seems unlikely that there should have been only two judges for several years before the end of the reign. According to the best evidence I can collect as to the judges whose names have been produced, the only two who sat in this Court at the death of the king on June 21, 1377, were Chief Justice John, de Cavendish and Thomas de Ingelby.

"Notwithstanding the clause in *Magna Carta* ordering that the Common Pleas should be held in some certain place, there is sufficient evidence to show that under Edward III. the rule was not strictly abided by. The statute of 2 Edward III., c. 11, enacts, that before the Common Bench be removed, 'the justices shall be warned by a time; so that they may adjourn the parties by such time that they shall not lose their process.'

"The ordinary place of sitting still continued to be at Westminster; but in the eighth year an assize was brought in the Common Pleas then sitting at York, for the office of livery in that court, the plaintiff complaining that he was dispossessed of his freehold in York. One of the counsel distinctly says that 'the Common Bench is not in a certain place, but sometimes here (in York) and at other times in London, depending according to the king's will.

Reference also is made to an assize held before Sir William Herle and his companions, in the Common Pleas at York, in an undated petition to parliament; but which must have been about the same period, as Herle soon after retired from the court.

"It is probable, as the Chancery and the King's Bench were, as we have seen, not stationary at this period, that the removal of the Courts was occasioned by the war with Scotland, and the king's desire to have his judges near him while he was prosecuting it.

"Another instance of this Court sitting at York may be found in the petition of the Commons in 38 Edward III., already adverted to, in which it is prayed 'that the King's Bench may be established at Westminster or York, where the Common Bench remains, that a man may have counsel of one place or the other.'

Of the Court of Exchequer at this time, Mr. Foss thus writes:—

"The Exchequer, with the exception of its temporary transfer to York during part of the first and the whole of the second year of the reign, while the king was in the north prosecuting his Scottish war, seems to have been permanently established at Westminster.

"The barons of this Court were not commonly men of legal education, but were usually raised to its bench from their practical knowledge of the revenue, acquired in minor offices connected with it. Sometimes, but not always, the chief baron was an exception; and in the statute of *Nisi Prius*, 14 Edward III., c. 16, it is enacted, 'That if it happen that none of the justices of the one bench nor the other come into the county, then the *Nisi Prius* shall be granted before the chief baron of the Exchequer, if he be a man of the law.' The other barons are not named at all in the statute; neither do they ever appear among the justices of assize, unless they have been sergeants, or have been previously removed from one of the other benches."

During the reign of Edward II. Mr. Foss observes, that the *delay of justice* was as common as in our days; and, indeed, the murmurs were so loud that the King felt it necessary, in November, 1315, to issue a mandate to all the Judges of the Courts of Westminster to attend more regularly to the dispatch of business, and not to be absent without his special command.

The survey of the reign of Edward the III. commences with the king's assumption of the title of King of France, and of the several changes in the Great Seal, some of which took place whilst he was in France.

In this part of his work, Mr. Foss observes, in speaking of the Chancellors, that 12 of the 17 were ecclesiastics: one was a military knight and four were educated as lawyers, and these latter were forced upon the king by the parliament.

Mr. Foss has devoted a considerable space to the statement and discussion of all the evidence relating to the origin of the Inns of Court and Chancery, and of the Inns occupied by the Judges and Serjeants. He has collected all the information on these subjects which the records and documents of the time afford, and has placed the history of what may be called "the University of the Law" in a clearer light than it ever stood before. We must reserve for a separate article our review of this part of the work :—referring to the original for the details which cannot fail to be interesting to every member of those ancient societies.

Mr. Foss has bestowed much attention on the "*attornatis et apprenticiis*" of the law,—a designation first used in the reign of Edward I. He states that,—

"By an ordinance of the parliament of 20 Edward I., entitled '*De Attornatis et Apprenticiis*,' John de Mettingham and his companions were enjoined to provide a certain number for every county of the better and more legally and liberally learned, according to what they conceived to be for the convenience of the Court and the people; and none but those were to follow the Court or interfere in its proceedings. The mandate suggests that 140 will be sufficient, but gives these judges power to increase or diminish the number. The words '*attornatis et apprenticiis*,' are probably used here synonymously, and were intended to apply to pleaders in the Court. The necessity for this addition no doubt arose from the division of the Courts being carried into full effect, and the Common Pleas being fixed at Westminster, while the King's Bench and Exchequer frequently followed the king.

"There can be no doubt that the apprentices of the law were, in fact, attorneys for their clients, representing them in the Courts. In 11 Edward III., John de Codrington, 'an apprentice of our lord the king, and attorney,' presented a petition to the parliament, complaining that, having neither lands nor tenements, nor arms for peace or war, he had been commanded to come armed to Orwell, on pain of death; 'which,' he says, 'would be in dishonour of his clients, for whom he is attorney;' whereupon he was excused.

"This John de Codrington was, perhaps, an apprentice in one of those establishments which we now call inns of Court, or Chancery; for we find him in 25 Edward III., clerk of the parliament; and, in the 33rd year, one of the Masters of the Chancery.

"That there were apprentices of different degrees we learn from the capitation tax, imposed two years after King Edward's death. There we find that the same rate, forty shillings, is charged upon '*chescun serjeant, et grant Apprentice du Loy*,' that 'other apprentices who pursue the law' are to pay twenty

shillings; and that a rate of only six shillings and eight pence is made on 'all the other apprentices of less estate, and attorneys.'

"Apprentices certainly acted as advocates in the Court from the commencement of the reign; for in Trinity Term of 1 Edward III. the Year Book reports a case (Pl. 3) in which 'un apprentice demanda : ' and it would appear from another case in the same term (Pl. 14) that either an attorney was then synonymous with apprentice, or that attorneys might plead in Court; for we find 'un attorney dit,' and Justice Stonore deciding on his application."

These are not unimportant facts, bearing on some of the questions now agitated in parliament and elsewhere, regarding the respective provinces of the two branches of the profession.

We are now, and have long been, overwhelmed with reports of Cases in all the Courts, by several contemporaneous reporters, many (as they are called) "regular" or normal, others abnormal, monthly, and weekly—in all varieties of shape and form—some long deferred, others uselessly elaborate, and a few concise and early. In each of his surveys of the reigns, Mr. Foss notices the eminent lawyers and reporters of the time. From these reviews of our English law writers we should have been glad to make some extracts; but must, for want of space, postpone them to another occasion.

Mr. Foss thus concludes the announcement of the future progress of his work :—

"My next volumes will embrace a period so far advanced that many of the families of the judges who lived in it are still flourishing. From the representatives of several of these I have received, and from others have been promised, the most liberal assistance: and as I have now given proof of my perseverance, I trust that all of those who bear a judge's name, or pride themselves in being connected with a judge's family, will honour my pages by allowing me to record what they know of their ancestor's career. Let them not refrain from an apprehension that they have but little to communicate. The minutest fact often becomes important in an inquiry, and sometimes supplies the very link in the chain of circumstances that is wanting to complete the history. I shall highly appreciate the information they may forward to me, and faithfully and gratefully acknowledge the source from which I derive it."

All who are in possession of any information that may be useful, will surely lend the author their aid, towards the completion of a work which cannot be too highly estimated, whether for the importance of its object, or the great learning, extraordinary research, judgment, and impartiality which are bestowed in all parts of its composition.

DIVISION ON THE CERTIFICATE
DUTY BILL.

Ayes.

Adair, R. A. S.
Alcock, Thomas
Arkwright, George
Armstrong, R. B.
Bailey, Joseph
Baird, James
Baldock, E. H.
Bankes, George
Baring, H. B.
Barrow, William H.
Bateson, Thomas
Benbow, John
Beresford, William
Berkeley, Hon. H. F.
Blake, Martin J.
Blandford, Marquis of
Blewitt, Reginald J.
Booth, Sir Robert G.
Bremridge, Richard
Brisco, Musgrave
Buck, Lewis W.
Burrell, Sir Charles
Castlereagh, Viscount
Cayley, Edward S.
Chaplin, William J.
Chatterton, Colonel
Chichester, Lord J. L.
Christopher, R. A.
Clay, James
Cocks, Thomas S.
Codrington, Sir W.
Coles, Henry B.
Cowan, Charles
Crawford, W. S.
Cabitt, William
Davies, D. A. S.
Dawes, Edward
Denison, Edmund
Duckworth, Sir J. T. B.
Duke, Sir James
Duncan, George
Duncombe, T.
Du Pré, C. George
East, Sir J. B.
Evans, Sir De Lacy
Evans, John
Ewart, William
Farrer, James
Forbes, William
Fox, S. W. L.
Fox, William J.
Freeston, Colonel
Freshfield, James W.
Frewen, Charles H.
Fuller, Augustus E.
Gallwey, Sir W. P.
Geach, Charles
Gilpin, Colonel
Gooch, Edward S.
Gould, Wyndham
Grazz, O. D. J.
Greene, Thomas
Greenall, C. P.
Grosvenor, Earl

Gwyn, Howel
Hall, Colonel
Hall, Sir B.
Hallewell, E. G.
Hamilton, Geo. A.
Hastie, Alexander
Heald, James
Henley, Joseph W.
Henry, Alexander.
Herbert, Henry A.
Hervey, Lord A.
Heywood, James
Higgins, G. G. O.
Hill, Lord Edwin
Hindley, Charles
Hodgeon, William N.
Hogg, Sir James W.
Hope, Sir John
Hope, Henry T.
Hornby, J.
Hudson, George
Jones, Captain
Keogh, William
Kershaw, James
Knightley, Sir C.
Knox, Colonel
Lacy, Henry C.
Lennox, Lord H. G.
Leslie, C. P.
Lindsay, Hon. Col.
Locke, Joseph
Long, Walter
Lopes, Sir Ralph
Lushington, Charles
Meagher, Thomas
Martin, John
Maunsell, Thomas P.
Maxwell, Hon. J. P.
Miles, W.
Monsell, William
Moody, Charles A.
Morris, David
Mullings, Joseph R.
Muntz, George F.
Murphy, Francis F.
Napier, Joseph
Newdegate, C. N.
O'Brien, J.
O'Connell, John
O'Connor, F.
O'Ferrall, Hon. R. M.
O'Flaherty, Anthony
Packer, Charles W.
Palmer, Robert
Pechell, Sir George R.
Peel, Col.
Perfect, Robert
Plowden, Wm. H. C.
Power, Dr.
Prime, Richard
Pugh, David
Raid, Colonel
Renton, John C.
Renton, G. W. J.

Reynolds, John
Richards, Richard
Sadleir, John
Salwey, Colonel
Sandars, George
Sandars, Joseph
Scholefield, William
Scully, Francis
Sibthorp, Colonel
Smyth, John G.
Somerset, Captain
Spooners, Richard
Staunton, Sir George
Stephenson, Robert
Strickland, Sir George
Stuart, Lord D.
Stuart, John
Thompson, Colonel
Thompson, Alderman

Thornhill, George
Tollemache, Hon. F. J.
Tyler, Sir George
Tynte, Col. C. J. K.
Verner, Sir William
Vyse, R. H. R. H.
Waddington, H. S.
Wakley, Thomas
Walmsley, Sir Joshua
West, Frederick R.
Whiteside, James
Williams, John
Williams, William
Willoughby, Sir H.
Worcester, Marquis of

TELLERS.

Grosvenor, Lord R.
Stafford, A. S.

Noes.

Abdy, Sir Thos. N.
Anson, Hon. Colonel
Armstrong, Sir A.
Baines, Rt. Hon. M. T.
Bell, Jacob
Bellew, R. M.
Berkeley, Admiral
Bethell, Richard
Bouverie, Hon. E. P.
Bowles, Admiral
Boyle, Hon. Col.
Brockman, E. D.
Brotherton, Joseph
Brown, William
Bruce, C. L. C.
Buxton, Sir Edw. N.
Campbell, Hon. W.
Cardwell, Edward
Carter, John B.
Childers, John W.
Christy, Samuel
Clay, Sir William
Clements, Hon. C. S.
Clerk, Rt. Hon. Sir G.
Clifford, H. M.
Cobden, Richard
Cockburn, Sir A. J. E.
Coke, Hon. E. K.
Colebrooke, Sir T. E.
Cowper, Hon. W. F.
Craig, Sir W. G.
Crawford, R. W.
Crowder, Richard B.
Currie, Henry
Currie, Raikes
Davie, Sir H. B. F.
Dawson, Hon. T. V.
Denison, John E.
D'Eyncourt, Rt. Hon.
C. T.
Disraeli, Benjamin
Divett, Edward
Douglas, Sir C. E.
Duncan, Viscount
Dundas, Admiral
Dundas, Rt. Hon. Sir D.
Ebrington, Viscount

Ellice, Right Hon. E.
Ellis, John
Elliot, Hon. John E.
Estcourt, J. B. B.
Evans, William
Fergus, John
Ferguson, Colonel
Fitzpatrick, Rt. Hon. J.
Forester, Hon. G. C.
Forster, Matthew
Fortescue, Hon. J. W.
French, Fitzstephen
Glyn, George C.
Goulburn, Rt. Hon. H.
Graham, Rt. Hon. Sir J.
Grenfell, Charles W.
Grey, Ralph W.
Hallyburton, Lord J.
Hardcastle, Joseph A.
Harris, Richard
Hatchell, Rt. Hon. J.
Hawes, Benjamin
Headlam, Thomas E.
Heyworth, Lawrence
Hobhouse, Thomas B.
Howard, Lord Edw.
Hume, Joseph
Hutt, William
Jermyn, Earl
Labouchere, Rt. Hon. H.
Langston, James H.
Lewis, George C.
Lygon, Hon. General
Mackinnon, W. A.
M'Gregor, John
M'Taggart, Sir John
Mahon, Viscount
Manners, Lord John
Marshall, William
Melgund, Viscount
Milner, W. M. E.
Milnes, Richard M.
Mitchell, Thomas A.
Molesworth, Sir Wm.
Mostyn, Hon. E. M.
Ogle, Saville C. H.
Owen, Sir John

Palmerston, Viscount	Smollett, Alexander
Parker, John	Somerville, Right Hon.
Pendry, E. W.	Sir W.
Philips, Sir G. R.	Spearman, Henry J.
Pinney, William	Stuart, Lord J.
Poasoby, Hon. C. F.	Thicknesse, B. A.
Portal, Melville	Thornely, Thomas
Pussy, Philip	Towneley, John
Ricardo, John L.	Trelawny, John S.
Rich, Henry	Trevor, Hon. T.
Robertes, Thos. J. A.	Tufnell, Rt. Hon. H.
Romilly, Colonel	Wall, Charles B.
Romilly, Sir John	Willcox, B. M'Ghie
Russell, Lord John	Wilson, James
Russell, F. C. H.	Wood, Rt. Hon. Sir C.
Seymour, Sir Horace	Wood, Sir William P.
Seymour, Lord	Wyld, James
Sidney, Mr. Ald.	Wyvill, Marquiduke
Slaney, Robert A.	
Smith, Rt. Hon. R. V.	
Smith, John A.	
Smith, John B.	

TELLERS.

Hayter, Rt. Hon. W. G.
Hill, Lord Marcus.

ANALYSIS OF DIVISION ON THE CERTIFICATE DUTY BILL, 8 JULY, 1851.

For the Bill.

- 119 Members who voted last Session for the bill.
21 absent last Session.
15 new Members.
3 paired off last Session for the bill.
3 paired off against it last Session.
1 voted against it last Session.

102

- 2 Tellers.
1 absent last Session paired off this Session.
4 voted for last Session paired off this Session.

149

Against.

- 107 Members who voted against the bill last Session.
13 absent last Session.
6 new Members.
6 voted for the bill last Session.

132

- 2 Tellers.
1 absent last Session paired off against.
4 voted against last Session paired off against.

139 including 33 Members of Government.

169 for

139 against.

30 majority.

NOTICES OF THE PUBLIC PRESS ON THE CERTIFICATE DUTY.

The Times, on the 6th July, has the following observations: "A perfectly independent member, after due notice, got up and made a proposition absolutely incompatible with the ministerial members of the Session. Though no leader of

party, he beat the government by a second majority in a full house. He had once before, on the same subject, beaten the government by the same majority in a much fuller house. Notwithstanding this warning, which might be supposed to have put ministers on their guard, if not on their mettle, and in spite of an uncompromising speech from the *Chancellor of the Exchequer* against his motion, he carried it, and obtained leave to bring in a bill accordingly. That bill, it is unnecessary now to inform our readers, was for the repeal of the attorneys' and solicitors' annual certificate duty; the mover was that respectable man Lord Robert Grosvenor; and the majority by which he carried his motion was 162 against 132.

Everybody knows why it is so easy to muster a good majority in behalf of attorneys. Do they not return the greater part of the county members? Have they not the landocracy 'under their thumb?' Thrice blessed is the county gentleman who can walk into and defy the spell of every attorney in the land. Few estates are there in which some attorney has not acquired a vested interest, and which himself, his heirs, and his executors cherish. They are omnipotent with farmers, barbers, and many other classes. Talk of *Jessie*! who is the General of that order compared with the clever attorney who has managed all the house, handled the title deeds, sold the estates, and let every farm far and wide in his neighbourhood? Considering that at least 600 out of the 666 members in the house has an attorney on his back, the wonder is that Lord Robert Grosvenor does not muster more to his periodical but unprofitable triumphs. We do not deny that much of the same influence of attorneys, or rather of their clients, out of whom the whole of the tax must ultimately be extracted, are only depending on the strength of the attorneys' interest, and the intelligible nature of Lord Robert Grosvenor's majorities.

Our powerful contemporary, *The Standard*, rates the influence of the attorneys as the result has been owing) we think, mainly to the justice of the claim, — added, no doubt, by the persevering industry of the promoters of the measure both in town and country.

The Globe, "the faithful friend" of the administration, thus writes on the subject the same day: "The question of the abolition of the certificate duty is a question of the abolition of the attorneys' certificates. We believe that to be the result of the powerful influence which the attorneys, as a class, are known to exercise over the county representation — an influence regulated upon the question of the certificates by an activity of canvass and a perfection of organization seldom surpassed. Motives, and arguments could be as visible as the physical identity of members, we strongly apprehend, in the following

the honest seal of Lord Robert Grosvenor, that the wishes of honourable gentlemen would be found represented at a much lower figure than their recorded votes."

In this conjecture, we have no doubt, *The Globe* is entirely mistaken, and that the votes in support of the repeal of the tax were given on the most just and honourable motives.

We shall have to make some extracts from *The Freeman's Journal*, in which the cause of the profession in Ireland, as well as in England and Scotland, has been ably advocated on this and other occasions.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE Committee of Management held their usual Monthly Meeting on Wednesday, the 9th inst., Mr. Watson, of Liverpool, in the Chair.

The Meeting was attended by a deputation from Liverpool and Manchester.

It was reported from the Equity Committee that Mr. Field, Mr. Gregory, Mr. Lake, and Mr. Kennedy had been examined before the Select Committee of the House of Lords upon the Master's Primary Jurisdiction in Equity Bill, and that other members were expected to be examined. That the various steps taken by this Association had been laid before the Select

Committee, and that a report strongly in favour of the bill might be expected.

The provisions of the bill were further discussed, and some additional amendments agreed to.

Correspondence on the subject of the Registration of Assurances Bill was read from Members and from the Secretaries of the Law Societies of Bristol, Northampton, Gloucester, Manchester, and Preston. After a prolonged discussion it was resolved.

That in the opinion of this Committee the proposed scheme of registration will not facilitate the transfer of real property or satisfactorily remedy any of the evils affecting the present system of conveyancing, but that it will, on the contrary, considerably increase the expense of all transactions, more especially those of small amounts, and that it will throw great obstacles in the way of, if not entirely prevent, the procuring temporary loans upon the deposits of title-deeds.

The Secretary was instructed to prepare a petition against the bill.

Mr. S. B. Jackman, of Ipswich, the Hon. Sec. of the Eastern division of the Suffolk Law Society, and Mr. James Sparke, of Bury St. Edmunds, the Hon. Sec. of the Western division of the same Society, were elected Members of the Committee.

The Committee adjourned until the 16th inst. WILLIAM SHAEN, Secretary.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Salmon v. Damm. June 25, 26, 1851.

MORTGAGOR AND MORTGAGEE.—ASSIGNMENT OF ARREARS OF INCREASED RENT FOR CONVERSION OF GRASS LANDS INTO TILLAGE.—PLEA.

Under certain leases, the defendants became tenants from year to year of two farms, at a certain rent, for eight years, with an increased rent of 40*l.* per acre for every acre of pasture land converted into tillage. The defendants held over after the expiration of the eight years, and the landlord mortgaged the estates to R. who assigned, and the mortgagee devised them to the plaintiff and another, since dead, on trust. It appeared that the defendants had, before the mortgage, but after the expiration of the eight years, converted some of the grass lands into tillage: Held, on appeal from an order of the late Vice-Chancellor of England allowing a plea of equity on the ground of the legal estate being in the assignee of the mortgage, by the tenants to a bill filed by the mortgagee's devisee in trust, upon such assignee refusing to interfere to restrain such waste and for an account of such arrears of increased rent, that the assignee was not entitled to such arrears of increased rent, there being no express assignment thereof

in the mortgage deed, and the plea was therefore overruled.

THIS was an appeal from the decision of the late Vice-Chancellor of England allowing a plea of want of equity on the ground that the legal estate was in the assignee of the mortgagee to a bill filed by a mortgagor to restrain the defendants, who were tenants of the mortgaged estate, from committing waste, and for an account of the profits arising from the waste already committed. It appeared that Morris Davis, after letting, in 1825, two farms called Northside Farm and Imber Court Farm, in Wiltshire, to the defendants, Matthew and William Dean, at yearly rents of 210*l.* and 460*l.* for each from year to year until the end of eight years, with a further rent of 40*l.* for every acre of meadow or pasture land that they might plough or break up during their tenancy, mortgaged the estates to Radcliffe to secure a loan of 10,000*l.*, and died in 1841, having devised the estates to the plaintiff and John Hare upon certain trusts, and Mr. Hare died in Nov., 1848. The defendants continued their tenancy after the expiration of the eight years, and in 1844 Mr. Radcliffe assigned the mortgage, the assignee giving the defendants notice not to pay any rent to the mortgagor or to the plaintiff, his personal representative. The defendants having claimed a debt from the mortgagor, the plaintiff, upon mortgaining that they had for several years back ploughed

and broken up some of the land, proposed to set-off the penalties thereby incurred against such debt; and, upon their refusal to do so on the ground that such arrears belonged to the mortgagee or his assignee, he requested such assignee to restrain the defendants from committing the waste complained of and to recover the arrears, and on the refusal of the latter filed this bill. The defendants put in a plea on the ground that the legal estate was vested in the assignee, to whom alone they were responsible, and not to the plaintiff.

J. Parker and Roxburgh in support of the appeal; *Rolt and W. W. Cooper*, contra.

The Lord Chancellor said, that the defendants, by holding over after the expiration of the eight years, continued to hold the farms upon the same terms as before, and had therefore rendered themselves liable to an increased rent by breaking up some of the grass lands, and as this was done before the mortgage, it became a debt due to the mortgagee, to whom, as there was no express assignment thereof in the mortgage deed, it belonged, and notice given to the tenants by the assignee of the mortgagee only applying to the accruing rents, and the plea must therefore be overruled and the appeal allowed.

July 12.—*Hargreave v. Hargreave*—Order for enrolment of decrees to be vacated, without costs.

—12.—*Manchester, Sheffield, and Lancashire Railway Company v. Great Northern Railway Company*—Arrangement agreed to.

—12.—*Attorney-General v. Oxford and Birmingham Railway Company*—Part heard.

Master of the Rolls.

Massey v. Carvick. June 3, 1851.

BILL TO ESTABLISH LIEN ON ESTATE IN RESPECT OF BOND RECEIVED IN PART PAYMENT OF MORTGAGE PROVING WORTHLESS.—FRAUD.

The plaintiff, who had advanced the defendant, a pious incumbrancer, money to pay off a prior incumbrancer of certain estates, taking a mortgage for the advance, re-conveyed upon receiving an assignment of a bond for a debt due to the defendant and being paid the balance; but the bond turning out worthless, she filed her bill for an account and seeking to establish a lien on the estate for the amount thereof, charging the defendant with fraud in inducing her to take the bond although he knew it was of no value. In the absence of evidence making out such fraud, the bill was dismissed with costs.

This bill was filed in November, 1844, by Mrs. Rebecca Anne Massey, by her next friend, for an account of the amount due in respect of the principal money and interest secured to the plaintiff under certain deeds dated in March, 1830, on certain estates at Highwood Hill, Hendon, and to establish a lien thereon for a

sum of 1,000*l.* It appeared that the plaintiff had advanced a sum of 4,650*l.* to the defendant, Thomas Carvick, a pious incumbrancer on the estate, for the purpose of paying off a prior incumbrancer, the advance being secured on the estate under deeds dated in March, 1830, and that she re-conveyed the property in November, 1832, upon receiving payment of the sum of 3,500*l.*, and having assigned to her a bond for 1,000*l.*, held by the defendant as security for a debt due to him of that amount, but which proved worthless, and for the amount of which the plaintiff now sought to establish a lien on the estate, alleging that the defendant knew his debtor was unable to pay at the time the transaction took place.

Roswell and A. J. Lewis for the plaintiff; *R. Palmer and Giffard* for the defendant.

The Master of the Rolls said that as the evidence did not support the allegation in the bill of the defendant having fraudulently induced the plaintiff to take the bond, the bill must be dismissed with costs as against him, and without costs as to other parties.

July 9.—*Read v. Strongways*—Judgment on construction of will.

—9.—*Lawrie v. Glutton*—Cur. ad. vult.

—9.—*London Gaslight and Coke Company v. Spottiswoode*—Demurrer for want of parties allowed, without costs.

—10.—*Attorney-General v. Mayor, &c., of Chester, in re St. John the Baptist's Hospital*—Reference to Master as to charity scheme.

—10.—*Hynam v. Lewison*—Injunction granted to restrain the defendant from selling fuses labelled to imitate the plaintiff's.

—11.—*Wombwell v. Hanrott*—Judgment on construction of will.

—12.—*Bryant v. Blackwell*—Judgment as to costs.

—11, 12, 14.—*Ballinger v. Howes*—Exceptions allowed to Master's report.

—14.—*Storer v. Armstrong*—Cur. ad. vult.

—15.—*Godson v. Turner*—Reference in suit for specific performance.

—15.—*Clebury v. Turner*—Cur. ad. vult.

Vice-Chancellor Knight Bruce.

Reporte Sturt, in re Sturt. June 11, 1851.

BANKRUPT.—REFUSAL OF CERTIFICATE.—BANKER AND CUSTOMER.

Upon appeal from, and confirming the decision of Mr. Commissioner Holroyd, the certificate was refused of a bankrupt who was a banker and had converted a short bill, belonging to customers, to the use of the bank, although the Court was of opinion the bankrupt might not have adequately considered at the time, and was not, perhaps, fully aware of the nature of the act in so converting the bill.

THIS was an appeal from the decision of Mr. Commissioner Holroyd, refusing the bankrupt his certificate, reported in *Parliamentary New Reports in Bankruptcy*, &c.

plaintiff appeared in person; Morgan, for the assignees, was not called upon.

The Vice-Chancellor said, that there was no dividend, either on the joint or on the separate estate, and referred to the bankrupt's examination as quoted in Mr. Commissioner Holroyd's judgment, relative to a short bill, belonging to Messrs. Debenham and Kinder, which had been irregularly converted to the use of the bank by sending it up to the Commercial Bank with others, in Oct., 1847, and in reference to which the bankrupt says,—"Gibson urged me to send up all the bills we could muster. This bill was produced, I said we had no right to part with it. He (Gibson) said, 'send it up.' I thought Gibson was abrogated, and that so harm could happen. I now confess my weakness and irregularity in the transaction." Unless, therefore, the effect of this admission could be neutralised by any explanation, this act could not be overlooked, although probably the bankrupt had not, at the time adequately considered or was aware of the effect of the step thus taken, the decision of the Commissioner must be affirmed and the certificate be refused, but the bankrupt might have his protection.

Moore v. Darton. June 13, 1851.

DONATIO MORTIS CAUSA.—INTER VIVOS.—
DECLARATION OF TRUST.—EVIDENCE.
—MASTER'S REPORT.—EXCEPTIONS.

A document acknowledging the receipt by the plaintiff of Miss D., for the use of Ann D., of 100*l.*, to be paid to her at Miss D.'s decease, and the interest at 4 per cent. to be paid to Miss D., and signed also by Miss D. approving thereof, held, an effectual declaration of trust inter vivos to constitute the plaintiff a trustee for Miss D. for life and for Ann D. afterwards: Held, also, that the delivery by Miss D., who was confined to her bed by extreme illness, and believed she would not live long, of another receipt signed by the plaintiff for 500*l.*, with the other to Ann D., telling her to take care of them, and that they did not come in the hands of her nephew, and directing that in case of her death the 600*l.* was to be cancelled, except as to the 100*l.*, created a donatio mortis causa in favour of the plaintiff, and exceptions were overruled to the Master's report finding the contrary.

THESE were exceptions to the Master's report in this case finding that the delivery of two documents did not constitute a donatio mortis causa in favour of the respective parties. It appeared that the deceased, Miss Darton, upon her being confined to her bed by extreme illness, and believing that she would not live long, had been assisted to her drawer where she kept her papers, and taking out, delivered to Ann Dye two receipts signed by the plaintiff, dated 22nd October, 1842, one acknowledging to have received of Miss Darton the sum of 500*l.*, which was to bear interest at 4 per cent. per annum, but not to be drawn at less than

six months' notice, and the other to have received of her 100*l.* for the use of Ann Dye to be paid to her at Miss Darton's decease, and the interest at 4 per cent. to be paid to Miss Darton, and which was also signed by Miss Darton approving thereof, and told her to take care of them, and not to let them come into the hands of her nephew, the present defendant, directing in case of her decease that the 600*l.*, except as to the 100*l.*, which was to be paid by the plaintiff to Anne Dye in consideration of her long acquaintance and friendship, should be cancelled, and the receipts accordingly remained in her custody until Miss Darton's death.

Swanston and Moron, in support of the exceptions, referred to *Snellgrove v. Bailly*, 3 Atk. 213; *Drury v. Smith*, 1 P. Wms. 403; *Walter v. Hodge*, 2 Swanst. 92; *Farquharson v. Cave*, 2 Coll. 356.

Walker and Pryor, contra.

The Vice-Chancellor said, that as in respect of the 100*l.* there was an effectual declaration of trust created *inter vivos*, by the document creating the debt to constitute the plaintiff a trustee for Miss Darton for life, and for Ann Dye afterwards, it was unnecessary to consider the question whether the facts disclosed a donatio mortis causa, so far as related to that sum. As to the other sum of 500*l.*, although the document was placed in the hands of Ann Dye, and not in the plaintiff's, there was sufficient evidence to show she received it as agent for him, and that the delivery to her was therefore equivalent to a delivery to him, and was sufficient to create a gift *mortis causa*, and the exceptions were accordingly allowed.

July 9.—*Bullivant v. Bellairs*—Judgment on claim on further directions.

—9.—*Esparte Youngman*, in re *Bliss*—Arrangement between parties confirmed, on assignees consenting.

—10.—*Hestall v. Chealle*—Decree for account of principal and interest due on mortgage and for redemption.

—11.—*Dobson v. Lord*—Judgment on exceptions to Master's report.

—12.—In re *St. James's Club*, *esparte De Butts and others*—Order for dissolution and winding up.

—14.—*Knight v. Watt*—Motion for injunction to restrain proceedings in County Court stand over on undertaking not to put judgment in force without applying to this Court.

—12, 15.—In re *Atkinson's Trust*—Order on petition for payment of fund out of Court.

—14, 15.—*Baskett v. Case*—Cur. ad. vult.

Vice-Chancellor Lord Cranworth.

Deeks v. Walker. June 12, 1851.

SUIT FOR WINDING UP JOINT-STOCK BANK AND CHARGING DIRECTORS WITH MISCONDUCT.—ORDER FOR WINDING UP.—MOTION TO STAY SUIT BY PLAINTIFFS.

A motion was refused, with costs, on behalf

of the plaintiffs in a suit instituted in 1842 to wind up a joint-stock bank and charging the directors with misconduct and liability in respect of shares taken by them, for staying the proceedings therein until after its affairs had been wound up under an order obtained in 1848 under the 11 & 12 Vict. c. 45, with liberty for any of the parties to apply to the Court respecting the costs.

This was a motion on behalf of the plaintiffs to stay the proceedings in this suit. (14 Sim. 57) which was instituted in 1842 to have the affairs of the Marylebone Joint-Stock Bank wound up, and to charge the defendants, the directors, personally with misconduct, and liability in respect of shares taken by them, until after the affairs of the company should have been wound up under an order obtained on Dec. 8, 1848, under the 11 & 12 Vict. c. 45, (reported 1 De G. & S. 585,) with liberty for any of the parties to apply to the Court touching the costs.

Bethell, Roll, and Glasse in support; Stuart and Cole, contra; Mahns and Southgate for other defendants.

The Vice-Chancellor said, that this was not the ordinary application by defendants to be relieved from two suits having the same object, but was by the plaintiffs, and the suit was instituted for objects which could not be obtained under the order for winding up which had been made, and besides, Lord Cottenham had held, upon a former application in the suit, that it must be disposed of before the winding-up order could be carried into effect; *In re St. Marylebone Joint-Stock Banking Company, ex parte Walker*, 1 Hall & T., 100; and the motion must therefore be refused with costs.

In re Chepstow, Forest of Dean, and Gloucester Junction Railway Company. June 27, 1851.

WINDING-UP ACTS.—MOTION TO DISCHARGE WINDING-UP ORDER.—ADVERTISING.

Held, that a motion to discharge an order under the 11 & 12 Vict. c. 45, and the 12 & 13 Vict. c. 103, for winding up the affairs of a company need not be advertised under s. 2 of the latter act, extending s. 10 of the former act.

Bethell and Glasse took a preliminary objection to this motion which was for the purpose of discharging an order made in January last to wind up the affairs of the above company, on the ground that it had not been advertised under the 12 & 13 Vict. c. 103, referring to s. 2, which enacts, that "when any petition for dissolution and winding up, or for winding up, the affairs of any company, under the said recited act, shall have been presented, every subsequent petition relating to the affairs of such company shall be addressed to and marked for the same Judge, and such petitions shall, in addition to the advertisement thereof in the *London Gazette* or in the *Dublin Gazette*, directed by the said act, be advertised at least seven clear days before the hearing thereof,

and once at least in two London daily morning newspapers; or in two Dublin daily newspapers; (as the case may be)." See *supra* p. 225.

Stuart and Terrell appeared on the motion. The Vice-Chancellor said, that the 12 & 13 Vict. c. 103, s. 2, had reference only to petitions for dissolution or winding up, and not to applications like the present, and overruled the objection accordingly.

July 11.—*Ex parte Hippelsham Free Grammar School*.—Interim order for investment of purchase-money and for payment of dividends to present Master.

17.—*Wellesley v. Mornington*.—Order for sale of office of Warden of Fleet of Hull, ault and Epping, without prejudice to defendant insisting that office was not included in deed of trust for benefit of residuary legatees.

10; 11.—*Menlove v. Carter*.—*Cur. ad. vult.*

12; 14.—*Rogston v. Earl Brounlow*.—*Cur. ad. vult.*

14.—*Fletcher v. Moore*.—Order on petition of infant to receive to pay 200*l.* to fit up a school-room as a chapel, and for payment of an annual stipend of 200*l.* to the curate.

14.—*Mulley v. Williams*.—Motion refused for an injunction, with leave to bring action at law.

14.—*Harcourt v. Seymour*.—Part heard.

Vice-Chancellor Turner.

Freeman v. James. May 2, July 5, 1854. EXECUTOR.—RIGHT TO SET OFF DEBT DUE FROM LEGATEE TO HIMSELF IN HIS PERSONAL CAPACITY.—SUIT BY ASSIGNEE TO RECOVER LEGACY.—COSTS.

Held, that an executor cannot set off against a legacy due from his testator's estate a demand due to himself in his personal capacity in respect of a sum paid by him as surety for the bankrupt who was entitled to the legacy as husband of the legatee, although he stated he had become surety relying on his being able to indemnify himself out of the legacy; and a decree was made, with costs, for payment to the bankrupt's assignee of such legacy, on a bill filed by them.

This bill was filed by the assignees of a person named Napier, to recover a legacy of 500*l.* to which his wife was entitled upon the death of her mother in 1843, against the defendant, the surviving executor of the will by which the legacy was given. It appeared that, upon the death of the legatee in 1843, her husband took out letters of administration to her estate, and that subsequently and before his bankruptcy the defendant had become surety

By s. 10 of the 11 & 12 Vict. c. 45, it is provided, that "every petition for dissolution and winding up, or for winding up the affairs of any company, under this act, shall be advertised once in the *London Gazette*."

for him in respect of certain bills of exchange, and had paid 518*l.* as such surety.

The Solicitor-General and Terrans in support of *Quinn's* claim, on the ground the executor had become such surety relying on his being able to indemnify himself out of the legacy, and that he was entitled to set off the amount he had paid.

The Vice-Chancellor, after taking time to consider, said, that the defendant could not claim to set off the amount so paid by him, as it was incurred in his own personal right, against the legacy due from his testator's estate, to his debtor, and a decree was made accordingly, with costs for payment of the legacy.

London and Portsmouth Direct Railway Company v. London and Portsmouth Direct Railway Company. Judgment on claim for specific performance of agreement. Costs reserved.

Beckett v. King. Sur. ad. vult.
— *Richards v. Richards.* Judgment on construction of will.

Moore v. France. Order setting aside deed, and for re-conveyance of property.

Cart and others v. Ambergate, Nottingham, Boston, and Blithfield Counties' Junction Railway Company. May 27; June 4, 1851.

CONTRACT FOR DELIVERY OF GOODS TO RAILWAY COMPANY. — READINESS AND WILLINGNESS TO DELIVER — DISCHARGE FROM CONTRACT — EVIDENCE.

The plaintiffs agreed with a railway company to supply them with 300 tons per month, to be used in the construction of the railway at the rate of 300 tons per month, to be delivered at such places and times as their engineer should direct, but the engineer having, before the goods were delivered, and upon the company becoming embarrassed, told the plaintiffs to deliver as slowly as possible, and eventually that the company would receive no more, they discontinued to make the goods and brought an action to recover damages for the breach of contract. Held, discharging a rule nisi for a new trial, that the allegation in the declaration of the plaintiffs' readiness and willingness was supported by the evidence, and that the goods were delivered, although no tender had been made, and of their preparedness and willingness the plaintiffs' own depositions and the residue of the goods. Held, that the plaintiffs were entitled to a new trial on the ground of misdirection, and that the verdict was against evidence. The declaration in the action alleged that the plaintiffs, who had entered into a contract to supply the defendants with 300 tons to be used in the construction of the railway at such places and times as their engineer should direct at the rate of 300 tons per month, were ready and willing to deliver the goods in accordance therewith, but

that the defendants had refused to receive them and prevented and discharged them from delivering the same, to which the defendants pleaded, traversing the plaintiffs' being ready and willing, their refusal to receive, and that the plaintiffs were prevented and discharged from the delivery. On the trial before Mr. Justice Coleridge at Nottingham, it appeared that the terms of the contract had been carried into effect until the defendants' engineer, upon the company becoming embarrassed, directed the goods to be delivered more slowly, and subsequently that no more could be received, when the plaintiffs discontinued to make any more and brought this action. The learned judge who presided left the question to the jury, whether the facts proved amounted to a discharge by the company to the plaintiffs from delivering the remainder of the chairs, and saying that the evidence was strong that they had done so, and the jury found a verdict for the plaintiffs with 1,800*l.* damages.

Hansfry, Q. C., and Willmore, showed cause against the rule, which was supported by *Macaulay, Q. C., and Denison.*

The Court, after taking time to consider, said, that there was no misdirection, and that the jury were justified, under the circumstances, in finding that the plaintiffs were ready and willing to deliver, although they had not tendered the goods, as it was not denied that if the company had been prepared to pay, the plaintiffs would have made and furnished the chairs. There was also abundant evidence that the company had refused to receive and that the plaintiffs were prevented and discharged from the delivery of any more goods, and as the damages were not excessive the rule must be discharged.

Court of Common Pleas.

Harman v. Montgomery and others. June 27, 1851.

ACTION BY CLERK FOR DISMISSAL FROM DEFENDANTS' EMPLOY. — PARTICULARS FOR DEMAND — QUANTUM MERUIT.

The particulars of demand in an action brought by a clerk to the defendants held sufficient, which claimed either a year's salary or damages for the defendants' having dismissed him before the end of the year, although at the time he claimed only a quantum meruit for the work actually done.

This was a motion pursuant to leave reserved for a rule nisi for a new trial on the ground of the insufficiency of the plaintiffs' particulars in this action which was brought to recover the sum of 200*l.*, the amount of one year's salary due to the plaintiff as the defendants' clerk, and who claimed either a year's salary or damages, for the defendants having dismissed him before the expiration of the year. At the trial before Mr. Justice Williams, the plaintiff obtained a verdict with 150*l.* damages, subject to this rule.

Byles, S. L., in support, on the ground that the plaintiff should have claimed in his declaration on a *quantum meruit* for the work actually performed by him, and that his particulars were calculated to mislead.

The Court said, the rule would be refused, as, although he had not stated the demand as clearly as he might have done, it was evident the plaintiff sought to recover either a whole year's salary or a gross sum for the amount of service rendered.

Exchequer.

Harvey v. Towers. June 13, 1851.

BILL OF EXCHANGE.—ACTION BY INDORSEE AGAINST ACCEPTOR.—PLEA OF FRAUD AND COVIN.—WANT OF CONSIDERATION.—ONUS OF PROOF.

Held, making absolute a rule nisi pursuant to leave reserved to enter a nonsuit in an action by the indorsee against the acceptor of a bill of exchange, to which the defendant pleaded fraud and covin, and that the plaintiff was holder without consideration, that it was the duty of the plaintiff to show he gave consideration for the bill after its fraudulent inception had been established by the defendant, and that it was not incumbent on the plaintiff to make out the remainder of his plea of the absence of consideration, having shown such fraud.

THIS was an action by the indorsee against the acceptor of a bill of exchange, to which the defendant pleaded that the bill had been obtained from him by fraud and covin, and that the plaintiff was holder without consideration. On the trial before Mr. Baron Martin, the fraud was proved, and the learned Baron having ruled that the defendant was bound to make out his plea and show want of consideration, and that the plaintiff need not show consideration for the bill, the verdict was taken for the plaintiff, subject to leave to move to enter a nonsuit.

A rule nisi having accordingly been obtained,

E. James and *Maynard* showed cause; *Wilkins*, S. L., and *Crompton*, in support, were not called on.

The Court held that it was the plaintiff's duty to show he gave consideration for the bill after its fraudulent inception had been proved by the defendant, and made the rule absolute to enter a nonsuit.

July 10.—*Heslop v. Baker*—Rule absolute to enter a nonsuit.

— 10.—*Longmead, executor, v. Holliday*—Rule absolute to enter a nonsuit.

— 10.—*Bland v. Campbell*—Rule absolute to set aside verdict for plaintiff and for new trial.

— 10.—*Williams v. Chester and Holyhead Railway Company*—Judgment for defendants.

— 10.—*Pears v. Williams*—Rule refused for prohibition to County Court.

— 10.—*Attorney-General v. London Dock Company*—Stand over.

— 10.—*Attorney-General v. Bradbury and another*—Stand over.

Court of Exchequer Chamber.

Boosey v. Jefferys. May 17, 20, 1851.

COPYRIGHT.—ASSIGNMENT BY FOREIGNER TO BRITISH SUBJECT.—ACTION FOR INFRINGEMENT.

Held, on a bill of exceptions to the ruling of Mr. Baron Rolfe, and reversing the decision of the Court of Exchequer in *Boosey v. Purday*, 4 Exch. R. 145, that a foreigner, although resident abroad, may assign the copyright in a literary work to a British subject for first publication in England; and Held, that such assignee may maintain an action for the infringement of a musical composition which had been assigned by the composer to R., a native of Milan, in accordance with the law of that place, and by R. to the plaintiff, a British subject, under an indenture duly executed and attested by two witnesses, although the assignment to R. was only attested by one witness.

THIS was a bill of exceptions to the ruling of Mr. Baron Rolfe against the plaintiff's right to recover in this action which was brought for an infringement of copyright in Bellini's opera of *La Sonambula*. It appeared that Bellini had originally assigned the copyright to Giovanni Ricordi, a publisher at Milan, on Feb. 19, 1831, by an instrument in writing in accordance with the law of Milan, who subsequently transferred it on 9th June, 1831, under an indenture duly signed, sealed, and delivered, and attested by two witnesses, to the plaintiff, a British subject, so far as related to its publication in this country. The publication took place in London on June 10, 1831, and was entered at Stationers' Hall under 5 & 6 Vict. c. 45. The learned Baron had followed the decision of *Boosey v. Purday*, 4 Exch. R. 145.

Bovill, in support of the exceptions, referred to 8 Anne, c. 19, which provided that the author of any book who had not transferred it to any other person, or the bookseller who purchased it should have the copyright, and to the 7 & 8 Vict. c. 66, under which aliens might hold any description of personal property.

Peacock, contra, contended that a foreign author residing abroad at the time of the first publication in this country by his consent, had no copyright, and that the assignment to Ricordi was not valid as it was not attested by two witnesses.

Curr. ad. vult.

The Court held, that the action was maintainable, referring to *Bentley v. Foster*, 10 Sim. 329, and overruled the objection as to the insufficiency of the assignment to Ricordi, as it was made according to the law of Milan, the assignment by Ricordi to the plaintiff being made according to all the forms of the English law, and directed a *venire de novo*.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JULY 26, 1851.  
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THE LORD CHANCELLOR, THE LAW REFORMERS, AND THE PROFESSION.

THE daily newspaper press has suddenly become enamoured of the question of Law Reform, which is perseveringly discussed with abundance of vivacity and spirit, sometimes with cleverness, but generally with a very superficial knowledge of the subject treated, and a marvellous disregard of facts. Amidst the variety of conflicting opinions promulgated, and the cloud of novelties suggested, there are two points upon which the writers on legal topics in the daily journals seem to be tolerably unanimous—the unqualified condemnation of all that is established, and the total repudiation of counsel founded on experience. Everything is to be changed after Jack Cade's fashion, the principles of Law and Equity are regarded as antiquated rubbish, and those who have the misfortune to be familiar with the system of procedure which has hitherto prevailed in the Courts of Justice,—men who talk of demurrers, injunctions, ejectments, and such “abominable words,” away with them! let them be hanged “with their own pens and ink-borns round their necks!”

The Lord Chancellor has become especially obnoxious to this intolerant school of law reformers. His elevated position, accurate knowledge, and extensive experience in every branch of legal administration, render it impossible that his views upon any subject connected with the law should not have great influence in parliament. Lord Truro, although a zealous and consistent reformer—one who, as he himself expressed it, “was a law reformer when it was not fashionable,”—has nevertheless sagacity and judgment enough to distinguish between a change and an improvement, and he is too independent and patriotic to bow down be-

fore the Baal which the modern law reformers have set up. Moreover, his lordship has an awkward mode of stating his opinions clearly—and supporting them by facts—a course particularly objectionable to those who desire to carry their favourite projects by clamour, and to hide their deformity by raising around them a mist of prejudice.

Without hostility to the principle of a measure for the registration of assurances, his lordship pointed out the gross and prominent defects of the bill introduced by Lord Campbell for this purpose. Admitting the utility of well regulated Courts for the Recovery of Small Debts, Lord Truro emphatically pronounced against the expediency of requiring those little-known gentlemen, the County Court Judges, to exercise all the functions of the Judges of the Superior Courts of Law and Equity and the Commissioners of Bankruptcy; and he was guilty of the immeasurable audacity of repeating in parliament, what has been felt by every person who has any concern in the administration of the law, and from time to time publicly expressed by nearly every judge on the Bench, that many of the recent alterations exhibit the marks of “rash hands,” and afford unmistakable evidence, that the zeal with which they were effected was tempered neither by judgment nor discretion.

The frank exposition of his sentiments upon these matters is looked upon as an unpardonable offence by those who assume to guide what is called public opinion. The Lord Chancellor is represented as the great obstacle to progress, and all the miserable arts of systematic detraction are employed, with the hope of diminishing the influence of a mind too acute to be wheedled and too manly to be bullied. He is twitted, in and out of parliament, with being “the

the same every case to employ both counsel and attorney. As experience has proved, the wisdom generally are satisfied with the advocacy of attorneys. The proposals to substitute other advocates, whether they are properly rejected. The permission to barristers to practice in the County Courts, without the intervention of attorneys, however, is not justifiable upon principle, and is justly regarded as an encroachment upon the rights of the most numerous class of the legal profession, and is very well for Mr. Colclough, who voted against Lord Robert Grosvenor's motion for the repeal of the Statute Duty, to talk of applying the principles of *Free Trade* to the practice of County Courts. The application of those principles to a body of men upon whom peculiar and personal taxes are imposed, is a gross violation of justice. The consequences of the resolution which the House of Commons has come to, it is not difficult to foresee, will be most detrimental to the public. Instead of sittings in the County Courts consulting professional men, known to and under the control of the Judges of those Courts, they will be beset by a swarm of incompetent and irresponsible persons, who, under the name of agents, will affect to assist them in preparing their case for the barrister, who may or may not have a "compact alliance" with the agent. We trust that when this bill is returned to the House of Lords, this section will be reconsidered by their Lordships, who, it will be remembered, were all but unanimous in disapproving of any enactment, the tendency of which was to confound the division which exists between the province of the Bar and the Attorneys.

LAW OF EVIDENCE.

The discussion upon the *Law of Evidence Amendment Bill*, was chiefly remarkable for some notable declarations from the law officers of the Crown in the House of Commons, as to the future amendments contemplated in this branch of the law; and certain ominous misgivings, on the part of independent members, as to the expediency of obliging a party in an action at law to produce his title-deeds for the inspection of his adversary. The leading provision of the bill, so frequently discussed in these pages, by which the parties to a cause, and the husband and wife of such parties respectively, were declared to be competent and compellable to give evidence, has been qualified by various exceptions, which restrict the operation so extensively, that their introduction may well suggest a doubt as to

the abundance of a principle, which requires to be both guarded and confined. The person charged in any criminal proceedings with an indictable offence, or any offence punishable on summary conviction, is not competent to give evidence for or against himself, but the same person, if the same offence becomes the subject of a civil action, is competent and compellable to appear as a witness. For example, upon an indictment (forbidden) the lips of the accused are sealed; but if he afterwards proceeds by action for the self-same libel, who so good a witness as the defendant? So, in an action for a malicious prosecution, the plaintiff will be competent to prove his own innocence of the crime imputed, although when on his trial for the offence his evidence would be wholly inadmissible. Again, the parties in any action instituted "in consequence of adultery," and in actions for breach of promise of marriage, are declared by this bill to be incompetent, whilst in an action for seduction, the defendant will be entitled to stand in the witness-box and state those facts from which the jury may infer that he is not the seducer, but it may be, the seduced. These are anomalies, and to say nothing of the exception protecting married persons from the obligation of appearing as witnesses for or against each other, which stands upon peculiar grounds, the several exceptions enumerated, suggest, that there is greater difficulty than at first appeared in the practical operation of the principle, that in judicial investigations the door could never be opened too widely, and that all objections arising from the position of a witness should be directed to the credit of the witness and not to his competency.

REGISTRATION OF ASSURANCES.

The noble Lord at the head of her Majesty's government continues to express his desire that the Bill for the *Registration of Assurances* should be proceeded with this Session, but notwithstanding these repeated declarations, the measure does not progress in the House of Commons, and considering the period of the Session at which we have arrived, there can be little doubt that the suggestion of Mr. Disraeli, that the bill should stand over until next Session, in order that it may then be referred to a Select Committee, will ultimately be adopted. Indeed, the course pointed out by the hon. member for Buckinghamshire is not only the judicious, but has now become the only practicable course, and it would have been convenient had the government acceded to it long since. *The bill was withdrawn on Thursday.*

APPEAL JUDGES.

The ministerial measure for improving the administration of the Court of Chancery, by the establishment of a Court of Appeal and the addition of two new judges, appears to have met with entire approval in the House of Lords, and will, without doubt, in due time be numbered amongst the acts of the Session of 1851.

MASTER'S JURISDICTION IN EQUITY.

The Select Committee have reported the evidence taken on this bill, but they have not reported on the bill itself. We presume, therefore, that it will not be further proceeded with this Session, especially as Lord Brougham's serious and regretted illness has compelled him to leave town.

CHARITABLE TRUSTS.

This bill also remains in the Select Committee, and considering the strong opposition made to it by numerous hospitals and institutions, there can be no expectation of its successful progress at present.

REGISTRATION OF ASSURANCES.

THIS Bill stood for 2nd reading on the 11th instant, when Sir James Graham stated he wished to present a petition of some importance, and he was anxious it should be presented in the presence of the noble lord at the head of the government. It was a petition from the Incorporated Law Society of Solicitors and Proctors practising in the united kingdom against the further progress of the Registration of Assurances Bill. It set forth that the society had been charged with an interest in this bill, adverse to that of the landed proprietors; they disclaimed any such interest, because they said that, although the effect of the bill might be to diminish the number of transfers of land, yet the cost for each transfer would be considerably greater than at present. It then set forth that this bill as it had come down from the other House would render necessary the preparation of all deeds in duplicate, would lead to a disclosure of family arrangements and settlements that would be unsafe; that the experience of the registration in Middlesex afforded a very doubtful example; that it would be adverse to the sale and purchase of small properties in land; that the machinery provided by the bill was inadequate, and that it contained an entirely novel principle, at variance with the stream of legislation on real property. Under all these circumstances, considering the advanced period of the session, they asked the government either that the bill should be postponed until another session, or at all events, if it were really the intention of the government to proceed with it this session, that there should be some inquiry on the subject. He

wished to ask the noble lord whether he intended to proceed with the 2nd reading of the bill that evening, and whether it was the intention to press this bill to its final consummation in the present session.

Lord John Russell said, "it was not his intention to move the 2nd reading that evening. It was a bill of such importance that the provisions of it ought to be clearly explained to the House, and he had asked his right hon. friend, the Master of the Rolls, who had very kindly consented to move the 2nd reading of the bill. He should propose that the 2nd reading be taken on Monday the 21st instant, and it certainly was the intention of the government, considering the very great importance of the provisions of this measure, *after being considered by a Commission for a very long time*, and having been before the House of Lords and having met with the general consent of the noble Lords in that House 'learned in the law,' to press the consideration of this bill in the present session."

NOW the report of the Commissioners made in July, 1850, and bearing the signatures of Lord Langdale, Lord Beaumont, Mr. Bellenden Ker, Mr. Coulson, and Mr. Frere, contains the following passages, showing that the bill now before the House is in no respect framed in conformity with the opinion of the Commissioners:—

"We now proceed to consider a very important branch of the inquiry, as to the means by which Registration may be best effected, namely, the mode of constructing the Index; upon which the effect of Registration, whether for good or for evil, will mainly rest. If the Index do not afford *facility of search*, and if it do not avoid all probable *chance of error*, the Register will become comparatively *useless*, and may become *mischievous*."

"It may be safely assumed that the Indexes now in use at the Offices in *Middlesex* and *Yorkshire* are not such as to fulfil their requirements, or to afford a sufficient guide for the construction of a new system. Neither do the *Scotch* or *Irish* Offices assist us in attaining the ends desired."

"After long consideration, the undersigned Commissioners, for the reasons which we shall proceed to state, have come to the conclusion that the best system of Registration is one which combines the advantages of Mr. Duval's classification of registered deeds according to *Titles*, with an Index referring to the land itself founded upon a *Public Map*."

"We have been satisfied that the most serious objections to Mr. Duval's plan would be effectually removed by the use of an Index founded on Maps; but we do not think that the utility of Maps in connexion with Registration is confined to the removal of the immediate obstructions to the introduction of the system. The ulterior advantages to be derived from the application of Maps to Registration appear to us of the highest importance."

"Although we do not expect that, on its first

establishment, all the advantages derivable from Registration can be attained, yet we consider it to be of great importance that the expedients first resorted to should, as far as possible, facilitate the introduction of such eventual improvements as may enable a purchaser to ascertain from the Register all the interests by which his possession of the land may be affected.

"It is only, we conceive, by the application of a public map to registration, that any hope can be entertained of this result. There is no connexion of title, there is no personal connexion, between the present ownership of the land itself, and many important rights affecting it. The only connexion between them is the land itself, and the only mode of connecting them on the register must be some description of the land, prescribed by authority as a common standard of reference. A public map is the only description, we think, which can be permanently useful for this purpose."

It will thus be seen that an essential part of the scheme proposed by the Commissioners was that maps of the whole kingdom should be provided, delineating every boundary of every property, and that the ownership should be indicated by an index.

The bill, as originally brought into the House of Lords, was founded mainly, if not altogether, on the Report of the Commissioners. In it the Maps occupied a prominent place; and, indeed, the whole scheme of Registration was based on them.

The Bill was read a second time in the House of Lords, and was referred to a Select Committee of their Lordships, including all the Noble Lords "learned in the Law."

It should be mentioned, in confirmation of the opinion of the Commissioners, that the Noble and Learned Lord who moved the Second Reading of the Bill stated, with reference to Maps, that *the defect which most strongly applied to any plan without the Maps was, that there would be nothing to connect the deed with the land to be conveyed by the deed*; but if the Maps and Indices were to be employed as he proposed, that difficulty would be greatly simplified.

The same Noble and Learned Lord, on the same occasion, observed, "*As to the mode of indexing by alphabetical arrangement of grantors, to show how inconvenient it was, their Lordships would just think the hundreds of Smiths and Joneses who executed deeds every year in Middlesex, and that the only way of finding out with certainty all the facts about any one property was by going through all the deeds of all the Joneses or of all the Smiths in the Register*;" and he proposed to avoid this enormous evil by the system of Maps and a Land Index.

Notwithstanding what was stated by the Commissioners in their Report, and urged on the Second Reading, as to the necessity of Maps in any system of Registration, the Select Committee of the House of Lords struck out

of the Bill every provision relating to Maps. They introduced a clause for providing at a future period, and after the commencement of the Register, *such Maps as the Registrar might deem useful*; but that clause was also abandoned on the Third Reading in the House of Lords.

The Maps and Land Index having disappeared from the Bill, of course it became necessary to furnish a substitute; and the only substitute which the Select Committee were able to suggest, was an *alphabetical Index of the names and additions (if any) of grantors* for each district, in which an entry is to be made opposite to the name of the grantor, containing a reference to the head under which the Assurance is entered in the Index of Titles, and in that shape the bill is now before the House of Commons.

It seems therefore to be placed beyond the possibility of dispute, that the Bill, in its present shape, not only receives no support from the Report, but is, by anticipation, strongly condemned by the learned Commissioners.—*Extracted chiefly from a Statement printed by the Incorporated Law Society.*

NEW ORDERS IN CHANCERY.

SALES OF PROPERTY BEFORE THE MASTER.

Wednesday, 16th July, 1851.

"THE Right Honourable Thomas Lord Truro, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Romilly, Knight, Master of the Rolls, and the Right Honourable the Vice-Chancellor Sir James Lewis Knight Bruce, the Right Honourable the Vice-Chancellor Robert Mounsey Lord Cranworth, and the Right Honourable the Vice-Chancellor Sir George James Turner, Knight, doth hereby order and direct in manner following, that is to say:—

"I. That when any property is directed to be sold before the Master, the Master shall be at liberty to order the same to be sold at such place, either in London or in the country, and by such person as he shall think fit.

"II. That when any property is directed to be sold before the Master, the Master shall be at liberty to fix a reserved bidding for the same, if sold entire, or if sold in lots one bidding for each lot, and such reserved bidding shall be made one of the conditions of sale under which the said property shall be sold, and in order that the Master may form his judgment as to such reserved bidding, the parties shall carry in before him such proposals as they may think fit. And the Master shall use his discretion as to communicating such reserved bidding to the parties, or any of them, or their Solicitors; and the Master, previously to such sale, if he shall think fit, shall cause to be put under a sealed cover and to be delivered to the person appointed to sell, a note in writing of the sum at which he shall fix such reserved bidding for each lot. And in case no person shall bid a price equal to or higher than the

sum mentioned in the said note, then the Master, or the person appointed by him to sell the said property, shall declare that such lot is not sold, but has been bought in on account of the persons interested in or entitled to the property.

"III. That when any property is directed to be sold before the Master, the Master shall be at liberty to fix an amount to be paid as a deposit by the purchasers respectively at such sale, and to appoint some proper person to receive the same, who, if required by the Master, shall give security, to be approved of by the Master, duly to account for and pay what he shall receive in respect of such deposit, in such manner as the Court shall have directed with respect to the moneys to arise from such sale, and the person appointed to receive such deposits shall, within such time as the Master shall appoint, and without any special order for the purpose, pay the moneys which he shall receive in respect thereof (the amount of such moneys to be certified by the Master) in such manner as the Court shall have directed with respect to the moneys to arise from the sale.

"IV. That when any property is directed to be sold before the Master, the Master shall be at liberty, either before or after such property shall have been put up for sale by public auction, to receive proposals for the sale thereof, or of any part thereof, by private contract, and he shall make his report thereof with his opinion thereon to the Court, which report shall be submitted to the Court for confirmation in the same manner as reports made upon special reference as to sales by private contract.

(Signed) "THURCO, C.

"JOHN RORTLEY, M. R.

"J. L. KNEIST BRUCE, V. C.

"CRANFORTH, V. C.

"G. J. TURNER, V. C."

COMMON LAW REFORM.

RECOMMENDATIONS OF THE COMMISSIONERS.

[Continued from p. 213, ante.]

Pleading.

31. That every declaration and subsequent pleading which shall clearly and distinctly state all such matters of fact as are necessary to sustain the action, defence, or reply, as the case may be, shall be sufficient, and it shall not be necessary that such matters should be stated in any technical or formal language or manner, or that any technical or formal statements should be used.

32. That all statements which need not be proved, such as the statement of time, quantity, quality, and value, where these are immaterial, that of losing and finding and bailment in actions for goods or their value, the statement of acts of trespass having been committed with force, and arms, contrary to the form of the statute or statutes, and against the peace of our lady the Queen, the statement of promises which need

not be proved as promises in actions of account, and mutual promises to perform agreements, and the like statements, be pleaded; and that where any clearly unnecessary statement is verbatim made, or any statement is made with unnecessary prolixity (as, for instance, where evidence of the fact is pleaded instead of or as well as the matter of fact itself) or otherwise, it may be struck out amended by the Court or a judge, with or without costs.

33. That it shall be open to either party to object by demurrer to the pleading, of the adverse party on the ground that such pleading does not set forth sufficient ground of action, defence, or reply, as the case may be, and that where issue is joined on demurrer, the Court shall proceed and give judgment according to the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect in or lack of form; and that no judgment shall be arrested, stayed, or reversed for any such imperfection, omission, defect, or lack of form.

34. That, except in the cases herein after particularly mentioned, no pleading shall be deemed insufficient for any defect now objectionable on special demurrer only.

35. That duplicity, argumentativeness, and uncertainty shall no longer be grounds of objection to a pleading, unless the effect of such duplicity, argumentativeness, or uncertainty shall be to embarrass the opposite party; but if any pleading, by reason of duplicity, argumentativeness, or uncertainty, shall be so framed as to embarrass or mislead the opposite party, it shall be competent to the latter to apply to a judge to have such pleading amended, which application shall be by summons, wherein the party shall state the particular ground of objection, and require that the pleading be amended.

36. And upon the hearing of such summons, if the judge shall be of opinion that the objection is well founded, and that the pleading is, in the respect objected to, so pleaded as to embarrass or mislead the opposite party, he may order the party pleading to amend in such manner as he may direct; and in the event of such amendment not being made within a limited time, the party complaining shall be at liberty to demur; but if the judge shall not be of such opinion, he shall dismiss the summons, and the party complaining shall have no further right of objection as to the point mentioned in the summons, or as to any other point of duplicity, argumentativeness, or uncertainty.

37. That a demurrer on any such ground as aforesaid shall state that it is pleaded by leave of a judge, and shall repeat the objection taken in the summons, and that only.

38. That upon the argument of such a demurrer the Court shall give judgment according to the validity or invalidity of the specified objection and the substance of the pleading.

39. That the Court or a judge, shall in all cases, have power to set aside frivolous or vexatious pleadings and pleadings colourably

40. That in proceedings commenced with a judge's order, to amend.

41. That all statutory enactments allowing parties to plead the general issue or other general plea, and to give special matter in evidence under such general plea, be repealed.

42. That express averment shall be abolished.

43. That the right to be entitled to demand of the other a copy or inspection, or both, copy and inspection, of any deed, agreement, bill, or other written document mentioned or referred to in the pleading, or whereof inspection could be obtained by a bill of discovery, and in the event of such copy not being delivered, or such inspection not being granted, shall be entitled to apply to a judge for an order for such copy or inspection, or both, as the judge may think fit.

44. That such demand, subpoena, or order shall be no stay of proceedings, except specially ordered.

45. That a party pleading in answer to any pleading in which such document is mentioned or referred to, shall be at liberty to set out the whole or such part thereof as may be material; and that the matter so set out shall be deemed and taken to be part of the pleading in which it is set out.

46. That a plaintiff or defendant may aver performance of conditions precedent generally; and the opposite party shall not deny such averment generally, but shall specify the condition of conditions precedent the performance of which he intends to contest.

47. That a defendant may traverse generally the facts contained in the declaration, where the general issue would now be applicable; and may by a plea of denial put in issue any material allegation in the declaration, although it might have been included in a general traverse.

48. That in all cases a plaintiff shall be at liberty to deny the whole of any plea or subsequent pleading of the defendant by a general denial, or to deny all but some admitted part or parts, or to deny any one or more allegations.

49. That a defendant shall in like way be at liberty to deny the whole or part of a replication or subsequent pleading of the plaintiff.

50. That in all cases of general denial the jury shall, if required, find as to the truth of the several allegations denied; and costs shall be awarded accordingly, as though the findings had been on different issues.

51. That special traverses shall be abolished.

52. That in any action for a trespass to person or property, the defendant shall be entitled to particulars identifying the cause of action for which the plaintiff is proceeding; and the plaintiff to particulars of any justification pleaded by the defendant; and that a judge may order plans of the locus in quo to be exchanged between the parties.

53. That no more than one new assignment shall be pleaded to any number of pleas to the same cause of action; and that the new assignment shall state that the plaintiff proceeds

for redress of action different from all those which the plea to which it is pleaded professes to justify, or for an excess over and above what all the defenses set up in such plea justify, or both.

54. That no plea shall be pleaded to a new assignment which has already been pleaded to the declaration, except in denial.

55. That in all actions of libel and slander the plaintiff shall be at liberty to aver that the words or matter complained of were used in a defamatory sense, specifying it, without any prefatory averments to show how such words or matter were used in that sense; and such averment shall be put in issue by the denial of the alleged slander or libel; and that where the words or matter set forth with or without the alleged meaning show a cause of action, the declaration shall be sufficient.

56. That upon an application to strike out one or more of several counts, on the ground that they are founded on the same subject-matter, the Court or judge shall have a discretion to allow such counts to stand upon such terms as he or they may think fit, although not satisfied that a distinct subject-matter of complaint is intended to be established in respect of each count; that the Court or judge shall have a discretion as to the costs of such an application; and that the rule of H. T. & W. 4, s. 8, so far as it relates to pleas, and also so much thereof as relates to depriving a party of the costs of a count on which he succeeds, shall be rescinded.

57. That the plaintiff shall be at liberty to reply several matters; a defendant to rejoin several matters, and so of subsequent pleadings, in the same manner as a defendant may plead several pleas.

58. That either party may, by leave of a judge, plead and demur to the same pleading at the same time; and that it shall be in the discretion of the Court or a judge which issue shall first be disposed of. Nevertheless, the party omitting to demur may move in arrest of judgment, or for judgment *non obstante veredicto*; but in such cases the party so moving shall pay all the costs of the abortive trial; and the Court shall make all such amendments as may appear, either by the judge's notes or by other satisfactory proof, to be justified by the facts of the case.

59. That the technical forms of action be done away with.

60. That different causes of action, of whatever kind, may be joined in the same suit, provided they be by and against the same parties and in the same rights; but that the Court or a judge shall have power to prevent the trial of different causes of action together, if such trial would, in their judgment, be inexpedient, and in such case may order separate records to be made up and separate trials to be had; provided, that when two or more of such causes of action are local and arise in different counties, the venue may be laid in either of such counties.

61. That every declaration, when the defend-

ant is within the jurisdiction, whether delivered or filed, shall bear an indorsement requiring the defendant to plead within eight days, otherwise judgment.

62. That rules to declare, or declare pre-emptorily, to reply, and plead subsequent pleadings, be abolished, and a four-day notice substituted for them in all cases; that such notice shall be in a similar form to the notice to plead, and either indorsed on the pleading or delivered separately; and that in default of compliance therewith judgment may be signed.

63. That the rule to plead and the demand of plea be abolished, and the notice to plead, which may either be indorsed on the declaration or delivered separately, be alone retained.

64. That no leave to plead several matters shall be necessary where the opposite party indorses a consent on an abstract of the pleas.

65. That the rule to plead several matters shall be abolished, and that a judge's order for that purpose shall suffice in all cases where a judge's order is necessary.

66. That all objections to the pleading of several pleas, on the ground that they are founded on the same subject-matter, shall be disposed of upon the summons to plead several matters.

67. And that leave to plead several matters shall not be necessary in cases where the rule to plead several matters is now obtained as of course, or in the case of such ordinary pleas as payment, accord and satisfaction, release, not guilty, denial that the close is the plaintiff's, leave and licence, and *son assault demesne*, which are usually allowed by the judge as of course.

68. That the signature of counsel shall not be required to any pleading.

Judgment by Default.

69. That the rule to compute shall be abolished.

70. That in all actions for liquidated demands judgment by default shall be final.

71. That in all cases in which damages are substantially matter of calculation, the Court or a judge may direct that the amount for which final judgment is to be signed be ascertained by the Master, without issuing a writ of inquiry.

72. That in all actions where the plaintiff recovers money, the amount which he is entitled to shall be awarded to him by the judgment, without any distinction being made as to whether it is for debt or damages.

Notice of Trial.

73. That ten days' notice of trial before the sitting day in London and Middlesex, the adjournment day in London, and the commission day at the assizes, shall, unless otherwise ordered by the Court or a judge, be sufficient notice in all cases.

Nisi Prius Record.

74. That the Nisi Prius record shall not be sealed or passed, but that it be delivered to the proper officer, to be by him entered as at present, and there remain until disposed of.

Jury Process.

75. That the venire and distringas or *habeas corpori juratorum*, and the entry *jurata positus in respectu*, be abolished.

76. That the precept now issued by the judges of assize to the sheriffs, except those of London and Middlesex, (which precept is at present confined in its form to matters of a criminal nature, to be tried at the assizes under the commissions of oyer and terminer,) be altered in form, directing that jurors shall be summoned for the trial of all issues, whether civil or criminal, to come on for trial at the assizes; that a printed panel be made and kept in the sheriffs' offices, both in London and Middlesex and in the country, for seven days before the commission day, for public inspection; and a printed copy of the panel be annexed to each Nisi Prius record.

NOTICES OF NEW BOOKS.

The Laws of Health in relation to Mind and Body: a Series of Letters from an Old Practitioner to a Patient. By LIONEL JOHN BEALE, M.R.C.S. London. John Churchill. 1851. Pp. 306.

LORD BACON has well said that "the duties of life are more than life;" but these various duties cannot be well performed without health. If this be true generally, it is peculiarly so in regard to professional duties, which require long-continued exertion and great mental energy. We hail, therefore, Mr. Beale's ably written and useful work on "the Laws of Health." The author, in his advice to the various classes of his readers, has expressly noticed "the Lawyers," and is therefore entitled at our hands to a fair return of the friendly compliment. There is, indeed, no order of society which requires more to be reminded of the duty owing to themselves, than the members of the profession, who, absorbed in attention to the affairs of others, are frequently neglectful of their own. In the volume before us, they will find several chapters which peculiarly apply to their condition and progress in this age of extraordinary and unceasing toil and anxiety, and considering how seldom they are sufficiently requited for their exertions, we trust they will avail themselves of these admonitions, and husband their strength for profitable occasions.

The 19th letter, relating to moderation in studies, may be usefully perused by our younger friends; and the 20th and 21st letters, on excess of ambition and inordinate desire of wealth, will afford some due warnings to our older brethren. The advice on

dist appears to be rational and judicious, and the remarks on air and exercise, and particularly on regular ablutions, must be valuable to all, and particularly to those who are compelled to pass much time in crowded and ill-ventilated Courts and Chambers.

The following is Mr. Beale's summary of the *Laws of Health* :—

"The principal laws of health, the regulation of which are under our own control and power, relate to the organs of digestion and respiration, the skin and the brain. 1. Temperance and sobriety in eating and drinking, taking only those things which we know to agree with us, and in moderate quantity. 2. To breathe as pure an atmosphere as possible, by living in well-ventilated houses and apartments, by exercise in the open air for several hours daily, in order that the whole of the air-cells may be emptied, and a fresh wholesome change of the particles of air may reach every part of our lungs. 3. To maintain a free state of all the pores of the skin by ablution and friction, so that there shall be no obstruction to transpiration; once at least in every twenty-four hours we should increase the ordinary transpiration to perspiration, by active exercise. 4. To promote the healthy action of the brain and nerves by active mental employment, giving to the mind, by proper exercise of all our faculties, mental and moral power to keep in subordination the emotions, the passions, and the propensities."

And he thus forcibly treats of the necessity of exercising the powers both of body and mind, varying their employment, but not exceeding a reasonable number of hours, in order to produce health and happiness :—

"It is a gross delusion to suppose that the working classes are to be pitied because compelled to labour : amongst them are the happiest part of the community. Exercise of body and mind is essential to our welfare, and those occupations are the most desirable which give employment to both. When only one works by necessity, employment must be found for the other. A lawyer, who is working his mind all day and his body but little, should, in his moments of relaxation, find exercise for the body only, and repose the mind. On the contrary, he whose occupation gives exercise to the body, should in turn give it rest, and find employment for the mind. Every one should have a resource for moments of leisure; a hobby of any kind is very useful, if not ridden too hardly. Change is essential to our well-being; we cannot for ever be doing the same thing; if we do, our minds sink into a state of apathy. The eager desire of novelty is the result of a law of our nature; and possibly the reason why there is no position in this world that can satisfy the mind may be, that the mind is not made to be satisfied with the

pursuits of this life, but only to employ them as a stepping-stone to another : nor is it a necessary consequence that we should be discontented with our lot, and always grumbling at fortune. On the contrary, the destiny of every man affords much to be satisfied with; and such is the diffusion of self-satisfaction, that there are very few who in all things—mind, body, and position—would change with another, however favoured by fortune. In the affair of mind, in the cultivation of intellect, in the advancement of our moral faculties, we should never rest satisfied; for the soundest head, with the longest life, will still find much to learn. Such is the limited power of the human mind in its present state, that a full and entire knowledge of any one natural science was never yet attained by the most devoted student; for the deeper he pursues the subject, the more he finds to learn. Is not this another convincing proof of the immortality of the soul? It is highly improbable that an all-wise, beneficent, all-powerful Creator would have given to the human mind aspirations and powers only to disappoint them.

"Six or eight hours is not too much to employ daily in business, and those men are the happiest who are constrained so to employ themselves. The purely independent part of mankind, those at least who have not devoted themselves to some useful object, deserve our pity rather than our envy; how many days in the year are wretched to the unemployed, if the weather be unfit for pleasurable employment out of doors—what complaints, what ennui, what misery! To the employed, bad weather is not agreeable, but they are not dependent on it, and time passes away imperceptibly, while the man of no business is counting the minutes, and wearied out with the length of his day. If we could get a statistical account of the number of hours satisfactorily employed by all classes of society, and the number of wretched ones, or those passed unsatisfactorily, would not the balance be greatly in favour of the working man?"

With these extracts and remarks, we recommend the volume to the careful perusal both of the anxious student and the busy practitioner.

OPINIONS OF THE PRESS ON THE CERTIFICATE DUTY.

THE *Scottish Press* of 12th July, says—

"Many people will be surprised, when all manner of rational and irrational claims to exemption from taxation have been produced in parliament, and put aside by the somewhat imperious Chancellor of the Exchequer, to find Lord Robert Grosvenor quietly step in with his annual motion for repealing the Attorneys' Certificate Duty; and, as he has done on four previous occasions, carry his point. In a house of 294 members, on Tuesday last, he obtained a majority of 30. Most unprofessional persons will be apt to say—'Attorneys'

Melins and Tullis supported. — 21. *W. L. Bacon and Bardon* for the members of the club, contra, on the ground the members were not liable, but the committee of management alone, as between the tradesmen and the club, citing *Ex parte James*, in re *Narborough and Washington Railway Company*, 11 *Sitt. N. S.* 140; *In re Besley*, 2 *H. & L.* 385; 2 *M. & W.* 426; *Fleming v. Hactor*, 2 *H. & W.* 102; *Tedd v. Emly*, 7 *M. & W.* 227; 8 *M. & W.* 565.

The Vice-Chancellor said, that the order must be made, as the club was within the 11 & 12 *Vict. c. 45*, s. 6, parts 7, 8, and that the question of the liability or non-liability of the members was for the Master to determine.

July 16. — *Ex parte Johnson*, in re *Goss* — Stand over.

— 27. — *Hyden v. Coleman* — Motion granted for leave to the Master to fix one or more reserved bidding or biddings in sale directed by the Court.

— 17. — *Letts v. Wymond* — Perpetual injunction.

— 19. — *In re Collier's Charity* — Order for appointment of new trustees and settlement of charity scheme.

— 19. — *In re Hempstead & Co. Company* — Stand over.

— 21. — *Leeson v. Howard* — Part heard.

Vice-Chancellor Lord Cranworth.

In re Chester and Manchester Railway Company, ex parte Phillips. June 16, 1851.

WINDING-UP COMPANY. — PETITION. — WHERE BILL FILED CHARGING DIRECTORS WITH MISCONDUCT.

A petition was refused with costs, to wind up the affairs of a company, under the 11 & 12 *Vict. c. 45*, where a bill had been filed by a shareholder, suing on behalf, &c. against the directors for winding up the company, and charging them with misconduct, and to which some of the answers had been put in, notwithstanding the plaintiff in such case consented to the dismissal of his bill upon an order being made on the petition, which was presented by his solicitor.

This petition was presented to wind up the affairs of the above company, which was projected in 1845, and provisionally registered, but had afterwards proved abortive. It appeared that a suit had been instituted by Mr. La Mert, on behalf of himself and the other shareholders, to wind up the company, and charging the directors with misconduct, to which some of the

Which enact that: "if any company shall have been dissolved, or shall have ceased to carry on business, or shall be carrying on business only for the purpose of winding up its affairs, and the same shall not be completely wound up."

"8. Or if any other matter or thing shall be shown, which in the opinion of the Court shall render it just and equitable, that the company should be dissolved."

answers had been put in and considerable expenses incurred. This petition was presented by Mr. Phillips, the solicitor for Mr. La Mert, who was willing to have his bill dismissed upon an order being made on the petition.

But he and Prior for the petitioner, referred to s. 7 of the 11 & 12 *Vict. c. 45*, which enacts, "that all proceedings had, accounts taken, and other matters done in the prosecution of any suit, before any order absolute under this act, shall, for the purposes of any winding up under this act, be as valid and conclusive as the same would have been valid and conclusive under the said act, and any pending proceedings, accounts, and matters under any such act, may be proceeded with and concluded under the act."

Stuart, Holt, Bacon and Little for other parties, contra.

The Vice-Chancellor said, that if an order were made on the petition, a great number of persons who did not appear to consent would be involved in expenses, and there being no relief asked personally against the directors, the petition must be discharged with costs.

July 18. — *Peacock v. Tally* — Order for the appointment of guardian ad litem to infant defendant on production of certificate of fitness without a commission.

— 18. — *Loftus v. Birch* — Injunction dissolved, costs reserved.

— 17, 18. — *Rockville Canal Company v. King and others* — *Cur. ad. vult.*

— 19. — *In re Gloucester, Chertsey, and Forest of Dean Junction Railway Company* — Petition for winding up discharged, with costs.

— 19. — *Roberts v. Roberts* — Judgment on construction of will.

— 15, 21. — *Seymour v. Lord Vernon* — *Cur. v. Seymour* — Part heard.

— 22. — *Jones v. Lord Langdale* — Order for payment of legacy to Commissioners for the reduction of the National Debt.

Bishop Chancellor Turner.

Collett v. Morrison and others. May 7, 1851.

POLICY OF INSURANCE. — FRAUDULENT INTERFERENCE WITH PROPOSAL FOR ISSUE AS TO MISREPRESENTATION OF STATE OF HEALTH.

Upon effecting an insurance, a form was filled up stating the proposer as "Mr. John Collett, by her trustee W. J. Richardson," but on its acceptance by the directors Richardson went to the office and filled up another form stating himself as the proposer, and the policy was drawn up in accordance with such second proposal. It was a bill filed by the plaintiff as husband and personal representative, and asking payment of the amount of the policy, that the policy should have been granted in conformity with the first proposal, and that the company could not object that the

old policy was void on account of both without business on the name of the proposer by reason of Richardson having no interest, but an action was directed in respect of interpretations alleged by the answer to have been made exceptions to the deceased's state of health.

This bill was filed against the directors of the Britannia Life Assurance Company to recover a sum of 999¹/₂, the amount of the policy of insurance effected on the life of Mrs. Collett, the wife of the plaintiff, with the defendants. It appeared that the proposal for insurance was made on September 9, 1844, in the printed form of the office, the name of the proposer being stated to be "Mrs. Emma Collett, by her trustee, W. J. Richardson," and that after the usual inquiries, the proposal was accepted, and notice sent to Mr. Richardson, who was made a defendant to this bill, on September 18 of such acceptance, and on the 19th he attended at the office and filled up a printed form in which he was stated as the proposer of the assurance, and not Mrs. Collett, and a policy was prepared and executed and the premium paid thereon in accordance with such his proposal. On the death of Mrs. Collett in 1845, the plaintiff claimed the amount of insurance as her personal representative, and the defendant Richardson also claimed it as the proposer of the policy. The dispute having been decided on a reference in the plaintiff's favour, and the company refusing to pay the money on the ground that the defendant Richardson was entitled thereto as the proposer, this bill had been filed charging the defendants with mistake or fraud in not preparing the policy in accordance with the first proposal, in the name of Mrs. Collett, and the defendant Richardson with having made communications to the company in order to prevent the plaintiff recovering at law, and seeking payment of the amount. The defendants, by their answer, denied that the plaintiff's wife was the proposer, insisted that the policy was void under the 14 Geo. 3, c. 48, on the ground that Richardson had no insurable interest in the life, and that misrepresentations had been made to the office in respect of the wife's state of health.

The Solicitor-General and W. M. James for the plaintiff; Rolt and Cairns for the company; J. Baily for Mr. Richardson.

Cov. ad. vult.

The Vice-Chancellor said, that the policy should have been prepared in conformity with the first proposal, and directed an issue on the question of the misrepresentations as to the deceased's state of health. As to the question of fraud, it did not appear any actual fraud was intended, but it was nevertheless the defendant's duty to have prepared the instrument in the proper form, and they could not afterwards set up an objection in respect thereof.

Ex parte Wright, 19 Ves. 357.

July 16. — *Boyle v. Ghad* — Claim dismissed as to appointment of new trustees, with leave to amend as to other parties seeking inquiries as to accounts, &c.

17. — *Scott v. Lord Hastings* — Stand over.

17. — *Bagley v. Dampier* — Motion granted to advance special case on the list.

18. — *Falkner v. Grace* — On special case, judgment for defendants, and application refused for case to be sent to a Court of Law.

21. — *Hull v. Hull* — Decree for conveyance in suit for specific performance.

22. — *Ridden v. Sandford* — Leave refused to file claim for specific performance, with liberty to file a bill.

22. — *Hulls v. Mackay* — Surviving partner held necessary party to creditor's claim in respect of debt due by partnership, against estate of deceased partner.

22. — *Basil v. Lister* — Part heard.

Crown's Bench.

Holloway v. Reginam. June 11, 1851.

INDICTMENT FOR ASSISTING PRISONER TO ESCAPE FROM GAOL. — SUFFICIENCY OF, ON ERROR, UNDER THE 4 GEO. 4, c. 64, s. 43.

In an indictment under the 4 Geo. 4. c. 64, s. 43, charging one of the turnkeys of a prison with aiding and assisting one of the prisoners who was meditating to escape therefrom, and that he assisted him with the intent to enable him to escape, and setting out with greater particulars the means in which it was effected, held sufficient, and the jury having found that it was with a felonious intent, the Court, on a writ of error under the 11 & 12 Vict. c. 78, affirmed the judgment.

This was a writ of error on an indictment framed under the 4 Geo. 4. c. 64, charging the plaintiff, one of the turnkeys, with aiding and assisting one Robin Thompson to escape from the gaol of Coventry. The indictment stated, that before the offence was committed one Robin Thompson, being a prisoner in the gaol of Coventry, was meditating to procure his escape therefrom otherwise than by due course of law, and in order thereto had procured a key to be made, and also had made, or caused to be made, to the plaintiff, certain overtures, to induce him to aid him in escaping from the gaol, and so was endeavouring to procure and effect his escape; that the plaintiff, not regarding his duty, feloniously and designedly did procure and receive the key adapted to and opening several locks in the gaol, whereby Thompson was secured, and with intent to enable him to escape from the gaol and go at large. On the trial, at the Warwickshire sessions, the jury found that the plaintiff feloniously aided and assisted Thompson in his attempt to escape, and he was sentenced to be transported for 14 years.

Flood, for the plaintiff in error, on the ground

the counts were bad, as insufficiently setting out the means of escape.

Mellor, for the crown, contra, was not called on.

The Court, after referring to the 11 & 12 Vict. c. 78, s. 5, which provides that, "whensoever any writ of error shall be brought upon any judgment on any indictment, information, presentment, or inquisition, in any criminal case, and the Court of Error shall reverse the judgment, it shall be competent for such Court of Error either to pronounce the proper judgment or to remit the record to the Court below, in order that such Court may pronounce the proper judgment upon such indictment," &c., said, that the Court would under that act do what the Court below would be bound to do, and arrest the judgment on the bad counts, and pronounce the proper judgment on the good counts. But in the present case it appeared the plaintiff in error had failed to show any of the counts were bad, as the allegation was precisely in accordance with the terms of the 43rd sect. of the 4 Geo. 4, c. 64, which enacts that, "if any person shall, by any means whatever, aid and assist any prisoner to escape or in attempting to escape from any prison, every person so offending, whether an escape be actually made or not, shall be guilty of felony, and being convicted thereof, shall be transported beyond the seas for any time not exceeding 14 years." It stated, that when the plaintiff aided Thompson he was meditating his escape, and that he assisted him with the intent to enable the prisoner to escape, and inference was fairly drawn that he assisted him feloniously, and the conviction must therefore be affirmed, and judgment for the Crown.

Rogina v. Bassett and another. June 11, 1851.

HOBHOUSE'S ACT.—WHAT TO BE CONSIDERED A PARISH WITHIN FOR THE PURPOSE OF APPLYING ACT THERETO.

Held, that the parish of St. Giles-in-the-fields, which formed, together with that of St. George's, Bloomsbury, under the statute of Anne, the ancient parish of St. Giles is not "a parish" to which the 1 & 2 W. 4, c. 60, is applicable without the concurrence of the said parish of St. George's, Bloomsbury; and on an indictment which come on in the form of a special case against the churchwardens of the former parish for refusing to call a meeting for that purpose, pursuant to a requisition of the inhabitants, the Court gave judgment for the defendants.

THIS was an indictment against the churchwardens of the parish of St. Giles-in-the-fields for refusing to call a meeting pursuant to a requisition delivered in March, 1850, for the purpose of considering whether the provisions of the 1 & 2 W. 4, c. 60, (Hobhouse's Act,) should be adopted in the administration of the parish affairs. The case now came on in the form of a special verdict, from which it appeared

that the parish of St. Giles had been divided in the reign of Anne into two distinct parishes of St. Giles-in-the-Fields and St. George's Bloomsbury, for all purposes except as to church rates and relief of the poor, and that the affairs of the joint parishes were regulated by the 11 Geo. 4, c. x. The defendants had refused to act on the ground that St. Giles was not a separate and independent parish, so as to come within Hobhouse's Act.

Crowder, Q. C., for the Crown; *Tomlinson*, for defendants, was not called on.

The Court said, that in regard to the 1 & 2 Wm. 4, c. 60, the parish of St. Giles-in-the-Fields must be considered as only half a parish, to which, therefore, the act was not applicable without the concurrence of the other parish of St. George's Bloomsbury, and that the defendants were entitled to judgment.

Court of Common Pleas.

Williams v. Lords Commissioners of the Admiralty. June 12, 16, 1851.

LORDS COMMISSIONERS OF THE ADMIRALTY.—SERVICE OF SUMMONS ON COMMISSIONER IN ACTION TO RECOVER ARREARS OF PAY.—IRREGULARITY.

Held, that the Lords Commissioners of the Admiralty may be sued in an action to recover arrears of pay as a navy surgeon; and a rule nisi was discharged with costs to set aside the service of the writ of summons in such action for irregularity which was served on one of the Commissioners, although the Court were of opinion the action in question could not be maintained, and discharged the rule on the ground that that question must be raised at a future period of the cause by plea.

THIS was a rule nisi to set aside the writ of summons and the service thereof, with costs, on the ground of irregularity, in this action, which was brought against the Lords Commissioners for executing the office of Lord High Admiral, to recover the arrears of pay claimed by the plaintiff as a surgeon in the navy, from which he had been dismissed in the year 1836. The writ had been served on Captain Milne, one of the Commissioners.

Roebuck, Q. C., and *Byles, S. L.*, showed cause, referring to the 1 & 2 G. 4, c. 93, s. 9, which empowered the Commissioners of the Navy "to bring, prosecute, and maintain any action or actions of ejectment, or other proceedings at law or in equity, for recovering possession of any manors," &c., vested in them by the act, "and also to bring, prosecute, and maintain, or to defend any other action or suit in respect of or in relation to the said manors," &c., under the title of "The principal Officers and Commissioners of his Majesty's Navy," "without naming them or any of them," and action or suit not to abate by death, resignation, or removal; to the 7 & 8 G. 4, c. 65, which provided, that "all the powers, privileges, authorities, jurisdictions, and exemptions given to,

and all duties and obligations imposed upon, the Commissioners for executing the office of Lord High Admiral for the time being, or any two or more of them, or given to or imposed upon any other person or body corporate in relation to the said Commissioners or any of them by any act of parliament now in force," should extend and apply to the Lord High Admiral for the time being; and to the 3 & 4 W. 4, c. 65, which enabled the Lords Commissioners of the Admiralty to sue and be sued, and to plead specially or the general issue in any action or suit that might be brought against them for anything done in execution or pursuance of the act.

Crowder, Q. C., and M. Smith in support, on the ground the Lords Commissioners were not a corporation and could not therefore be sued in a corporate name, but in an individual character; and that service on one of them was consequently insufficient; that even if they were a corporation, service of the writ on one of the members of the corporation was insufficient under the Uniformity of Process Act, 2 W. 4, c. 39, which provides, that "the chief officer, town clerk, or secretary," must be served; and that the Commissioners, as representing her Majesty, could not be sued by action, but must be proceeded against by petition of right.

The Court, after taking time to consider, said, that the question was not whether the plaintiff had got an action which was clearly unobtainable, but whether he could sue the defendants in their corporate capacity, and the facts of the case could not be regarded upon the present motion. Although it appeared clearly the action could not be maintained, yet that question must be raised at a future period by plea, and as at the present stage of the cause the plaintiff had a right to issue the writ, the rule must be discharged with costs.

Abley v. Dale. April 28, May 1, June 13, 1851.

COUNTY COURTS' ACT.—EFFECT OF DISCHARGE UNDER INSOLVENT DEBTORS' ACT.—ACTION FOR FALSE IMPRISONMENT.

Held, that the discharge of a debtor under the Insolvent Debtors' Act does not take away the jurisdiction of the County Court judge under the 9 & 10 Vict. c. 95, s. 98, to commit the debtor to prison for non-payment of an instalment of the judgment debt, although it was inserted in the debtor's schedule. But where the point had not been raised on the trial, an action brought for imprisonment, under the above circumstances, to which there was a plea of "not guilty," and the debtor obtained a verdict, a rule was made absolute for a new trial on payment of costs.

THIS was a rule nisi granted on April 23rd last, pursuant to leave reserved, to enter a non-suit, or to set aside the verdict for the plaintiff and for a new trial. The action was brought

for false imprisonment by the defendant of the plaintiff, notwithstanding he had obtained his discharge from the Insolvent Debtors' Court and entered the debt due to the defendant in his schedule, under a warrant of commitment obtained on a judgment summons in a County Court for non-payment of an instalment of the judgment debt. The defendant pleaded "not guilty."

Lush showed cause against the rule, which was supported by *Hugh Hill*.

Cur. ad. vult.

The Court said, that the question whether the County Court judge had jurisdiction to commit after the debtor had been discharged under the Insolvent Debtors' Act depended upon the meaning of the words "unsatisfied judgment" in the 9 & 10 Vict. c. 95, s. 98, which provides that "it shall be lawful for any party who has obtained any unsatisfied judgment or order in any Court held by virtue of this act, or under any act repealed by this act, for the payment of any debt or damages or costs, to obtain a summons from any County Court within the limits of which any other party shall then dwell or carry on his business," "requiring him to appear at such time as shall be directed;" and s. 99 empowers "such judge, if he shall think fit, to order that any such party may be committed" "for any period not exceeding 40 days." Precise words were used in the statute and which were plain and unambiguous, and the Court was bound to construe them in their ordinary sense, although it might possibly lead to an absurdity, as it was not the province of the Court to speculate as to the intentions of the legislature. The Court, therefore, would not depart from the ordinary construction of the words of the statute, under which the judges of the County Court had jurisdiction to commit, notwithstanding the discharge of the debtor by the Insolvent Court; but as this point had not been raised at the trial, there would be a new trial on payment of costs.

Court of Exchequer.

Parker v. Bristol and Exeter Railway Company.
June 14, 17, 1851.

RAILWAY COMPANY.—ALLOWANCE TO CARRIERS.—ACTION OF MONEY HAD AND RECEIVED TO RECOVER.

Held, refusing a rule nisi to set aside the verdict for the plaintiff and enter a non-suit on leave reserved, that an action will lie for money had and received to recover the amount of overcharges made by the defendants, a railway company, on the plaintiff, a carrier, in respect of the non-allowance of certain sums for collecting and delivering goods in the payments for the same to the company by the plaintiff.

THIS was an action brought by the plaintiff, who was a carrier to and from the western districts of England, to recover as for money had and received the sum of 49l. 6s. 10d. for

overcharges which he had paid the defendants for goods carried by their railway between the 26th March and 22nd April, 1851, and for an allowance of 10 per cent. as an equivalent for certain services performed by him and his servants, to which the defendants pleaded "never indebted." It appeared on the trial before Mr. Baron Parke, at the Nisi Prius Sittings in Middlesex in Trinity Term last, that upon the Great Western Railway Company taking a lease of the Bristol and Exeter Railway, they offered an allowance of 10 per cent. on all goods sent by their line by carriers, and a further allowance of 6s. per ton for collecting and delivering the goods in London, and 2s. in Taunton. The allowance of 10 per cent. had been discontinued from May, 1844, but the defendants, on the determination

of the lease, had appointed carrying agents to whom the allowances of 5s. and 2s. were made, and the plaintiff and other carriers had allowed their servants to assist the defendants' porters in loading and unloading the goods at the stations. The jury having found that the plaintiff was entitled to these allowances of 5s. and 2s., the damages were settled at 9s. 6d. with leave to the defendants to move to set aside and enter a noli suit.

Kinglake, S. L., moved accordingly, and contended that the plaintiff could not recover in an action for money had and received, the amount of overcharge claimed.

The Court said, that the rule must be refused, referring to *Ashdale v. Wainwright*, 3 Q. B. 827.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

JOINT-STOCK COMPANIES' WINDING-UP ACT.

[Continued from page 208, ante.]

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Legacy, p. 147.

Courts of Equity:

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, p. 204.]

DOCUMENTS.

General order to deliver up documents.—The 98th section of the Joint-stock Companies' Winding-up Act, 1848, providing that, immediately after the appointment of an official manager, the Master shall direct that all deeds, &c., belonging to the company shall be delivered up by every person in whose custody they may be, only authorises the Master to make a general order, and does not empower him to make, *ex parte*, an order directed to a particular individual to deliver up documents in his custody. *In re Warwick and Worcester Railway Company, Pell's case*, 3 De G. & S. 470.

DEPOSITS, RETURN OF.

A provisionally-registered railway company having abandoned their undertaking, the directors made two payments to the shareholders in part return of their deposits; and they offered to make a third and final payment, which the whole or nearly the whole of the shareholders, except A., accepted. All the debts and liabilities of the company were discharged, and all the assets of it were exhausted; and A.

applied for and received the second payment, and being one of the shareholders who had concurred in the dissolution of the company. Nevertheless he, being dissatisfied, as he alleged, with the directors' accounts, petitioned for an order for the dissolution and winding-up of the company, or for winding it up if it had been already dissolved.

The Court refused to make the order at once, and directed the Master to inquire and state whether it was necessary or expedient that the company should be dissolved and wound up, or wound up. *In re Boston, Newark, and Sheffield Railway Company, ex parte Williams*, 1 Sim. N. S. 57.

ENROLMENT OF ORDER.

1. It is no objection to the enrolment of an order, pronounced in one of the Courts below, under the Joint-stock Companies' Winding-up Acts, 1848 and 1849, that it has been effected with unusual expedition; but a party will not be deprived of the opportunity of appealing against an order, if he have been thrown off his guard, and misled by his opponent, who afterwards enrols the order. *In re The Direct London and Exeter Railway Company, ex parte Hollingsworth*, 1 H. & T. 587; 1 M.N. & G. 534.

2. The Joint-stock Companies' Winding-up Acts, 1848 and 1849, do not affect the practice of the Court, applicable to the enrolment of orders or decrees. *In re The Direct London and Exeter Railway Company, ex parte Hollingsworth*, 1 H. & T. 587; 1 M.N. & G. 534.

EXECUTOR.

Construction of deed.—*Liability.*—By a company's deed it was provided, that every person who, being the executor of any deceased proprietor, should not, at the time of the shares vesting in him in such capacity, be a recognised proprietor in respect of any other shares, should, as to all duties, obligations, &c., upon or against him in respect of such shares, be-

come a proprietor from the time of the shares becoming so vested in him: but, as to profits, &c., no such person should be considered a proprietor in respect of the same until he should have executed or assented to the deed: *Held*, that the receipt of dividends by the executor of a deceased proprietor did not create any personal liability in the executor. *In re The St. George's Steam Packet Company, ex parte Doyle*, 2 H. & T. 221.

See *Contributory* 2.

FOREIGN COMPANIES.

1. An association was formed for making a railway from Madrid to Valencia, by means of a company, which was to be a *compañia anónima*, having its home in Spain, and being subject to the commercial code of Spain. Two-thirds of the capital were to be subscribed in England, and the remainder in Spain. The Spanish directors had been unable to raise one-third of the capital, and had therefore returned the deposits: *Held*, that the company was (so far as related to the English subscribers) within the scope of the Joint-stock Companies' Winding-up Act, 1848, and that the circumstances authorised the interference of the Court under that act. *In re Madrid and Valencia Railway Company, ex parte James*, 1 H. & T. 597; 2 M.N. & G. 169; *In re same, ex parte Turner*, 2 M.N. & G. 169.

Reduction of capital.—*Held*, that the reduction of the capital by the money subscribed by the Spanish shareholders having been returned was a sufficient ground for winding up the company. *In re same, ex parte same*, 2 M.N. & G. 169.

2. Spain.—In a joint-stock company projected to consist of 120,000 shares, with a deposit of 2*l.* a share, 53,000 shares were subscribed for, and the deposits were paid upon them, prior to February, 1848. The promoters obtained from the Spanish government a right to construct a railway in Spain, and deposited 88,000*l.* as a guarantee for the formation of the railway, subject to forfeiture if the works were not proceeded with. The preliminary surveys were made, but litigation having arisen among the shareholders, no further progress was made in the undertaking, and the deposits of the Spanish shareholders were returned to them by the directors in Spain, upon an agreement to re-advance them when wanted: *Held*, a proper case for ordering the company to be wound up under the Joint-stock Companies' Winding-up Act. *Ex parte Turner, ex parte James, in re Madrid and Valencia Railway Company*, 3 De G. & S. 127.

3. Railway in Spain.—*Conflict of laws.*—By the prospectus of a joint-stock company provisionally registered in England, it was proposed to form a company, to be constituted a "*Compañia anónima*" in Spain, for the construction of a railway in that country. It was therein stated that the affairs of the company would be conducted by a board of directors in London, (where the company had an office,) assisted by a committee in Madrid. The objects of the company having failed: *Held*, that the English

law applied to such a company, and that it was within the jurisdiction of the Court to dissolve the company and wind it up. *Ex parte Turner, ex parte James, in re Madrid and Valencia Railway Company*, 3 De G. & S. 127.

FORFEITED SHARES.

The deed of settlement of a company purported to be made between persons referred to and described as being named in a schedule, of the first part, and persons named and described of the second and third parts. There was no schedule to the deed, which, however, was executed by numerous persons besides those of the second and third parts. One of the clauses authorised the directors to declare forfeited the shares of any party to the deed who did not execute it; and another clause directed that, on a transfer, the transferee should take on himself the antecedent liability of the transferor. An allottee of shares paid his deposit and some calls, but did not execute the deed. The directors declared his shares forfeited, and carried them to the company's share account, and he submitted to the forfeiture. On the affairs of the company being, several years afterwards, wound up, under the Joint-stock Companies' Winding-up Acts, the Master excluded the allottee from the list of "contributories," holding that he was virtually a party to the deed, so as to enable the directors to forfeit his shares under its provisions; and that the forfeiture relieved him from responsibility in respect of losses accruing before it was declared. The Court, on appeal, affirmed the decision. *In re Koltman's Railway Locomotive and Carriage Improvement Company, Beresford's case*, 3 De G. & S. 175.

See *Allottee*, 2.

FRAUD.

Directors, not agents of company, to commit fraud.—Directors fraudulently inducing a person to become a purchaser of shares in a company may be personally liable to him, but they cannot be considered as the agents of the body of shareholders to commit a fraud of this kind, nor is such a fraud a valid objection, the purchaser's name being on the list of contributories.

Observations on Sandersen's case.—*Observations on Morgan's case.*—*In re North of England Joint-Stock Banking Company, Dedgson's case*, 3 De G. & S. 85.

HUSBAND AND WIFE.

See *Allottee*, 11, 12, 22.

INFANT.

Contributory.—*Validity of transfer to.*—By the rules of a steam packet company, shareholders were entitled to a free passage by the company's vessels, and there were some provisions in the deed of settlement for the event of infants being shareholders. A shareholder in the company transferred shares to a son, who was not of age: *Held*, that entries in the company's books, on the occasion of the son obtaining tickets as a proprietor, for a free passage, describing him as *Master*, did not affect the company with notice of his minority so as

to discharge the father in respect of the transferred shares; but that, on winding up the company, the father's name was properly placed on the list of contributories in respect of the shares. *In re St. George's Steam Packet Company, Litchfield's case*, 3 De G. & S. 141.

INSURANCE COMPANY.

1. Winding-up order made in the case of an insurance company which had been dissolved, and its business transferred to another office, there remaining a sum of 4,000*l.* to be divided among the shareholders. *Ex parte Phillips, in re London and Westminster Insurance Company*, 3 De G. & S. 3.

2. The circumstance that policies of a life insurance company are still in force, and that the liabilities of the company upon them cannot be settled for many years, is not sufficient to render it inexpedient to make any order for winding up such a company, under the provisions of the Joint-Stock Companies' Winding-up Act, 1848. *Ex parte Dee, in re Universal Tontine Life Insurance Company*, 3 De G. & S. 112.

INTERPLEADING.

1. An appellant from a decision placing him on the list of "contributories," need not bring before the Court a person who would be liable if he were not. *In re North of England Joint-Stock Banking Company, Sanderson's case*, 3 De G. & S. 66.

2. Parties otherwise liable.—Where the liability is either upon the person placed on the list of contributories, or on a stranger, it is not necessary for the official manager to bring such stranger to interplead before the Master. *In re North of England Joint-Stock Banking Company, Hall's case*, 3 De G. & S. 80.

JURISDICTION.

1. Injunction.—Debtor and creditor.—After a creditor of a joint-stock company had commenced proceedings in the Lord Mayor's Court, to attach the funds of the company in the hands of its bankers, an order was made for winding up its affairs.

Held, nevertheless, that the Court had no jurisdiction to restrain the creditor. *In re India and Australia Steam Packet Company*, 17 Sim. 15.

2. Injunction.—Debtor and creditor.—The Court has no jurisdiction to restrain a creditor of a joint-stock company from suing one of the members, on the ground that the order has been made for winding up the affairs of the company. *In re Dover and Deal Railway Company*, 17 Sim. 18.

3. Of the Master.—After the Master had inserted B.'s name in the list of contributories, and after the Court, on appeal, had ordered it to be struck off, the Master, on new evidence being brought before him, ordered the name to be replaced on the list.

The Court *held*, that the Master had exceeded his jurisdiction, and ordered the name to be again struck off. *In re Direct Birmingham, Oxford, Reading, and Brighton Railway Company, Best's case*, 1 Sim., N. S., 193.

4. The jurisdiction of the Court is not af-

fectured by the 9 & 10 Vict. c. 28, for facilitating the winding up of certain railway companies. *Jones v. Lord Charlemont*, 16 Sim. 271.

5. Of the Master.—Petitioner discharged from further attendance.—It is within the jurisdiction of the Master to discharge the petitioner, upon whose petition the affairs of a company are directed to be wound up from any further attendance before him in the proceedings. *In re London and Manchester Direct Independent Railway Company, Barber's case*, 1 De G. & S. 726.

6. In what cases order made.—In a provisionally registered railway company, 88,400 shares were allotted, the deposit being 5*l.* 5*s.* per share. On the bill being thrown out in the House of Commons, on the Standing Orders, and the directors abandoning the undertaking, 3*l.* 10*s.* per share was returned to the holders of 88,375 shares, who thereupon delivered up their scrip certificates, and took fresh ones purporting to entitle the holders to a *pro rata* division of the funds remaining after settling the claims on, and the liabilities of, the company. The holders of 87,940 of these new certificates received a further instalment of 10*s.* per share, and signed a release, admitting a certain balance only to be then in the hands of the directors.

An original holder of 30 shares, who received the former, but not the latter instalment, presented a petition to have the company wound up, under the Winding-up Act, alleging a refusal or neglect, on the part of the directors, to produce accounts, and alleging a misapplication of 15,000*l.* on payment of a deposit on an agreement for the purchase of land, contrary to the Registration Act: *Held*, not a case for making at once an order to wind up the company, or even, without further materials, for a reference to the Master under the section, as to the expediency of winding up the company.

But, it appearing that the petitioner's application to see the accounts had not been attended to, the petition was ordered to stand over to give him an opportunity of seeing them. *Ex parte Pocock, in re Direct London and Manchester Railway Company*, 1 De G. & S. 731.

7. Company incorporated for part of original project.—A company was provisionally registered for making a railway of 170 miles, to complete the communication from London to the western coast of Ireland, and a subscription contract was executed, authorising the directors, amongst other things, to apply for an act to construct only a portion of the line if they thought fit. Afterwards, a portion of the scheme was abandoned by the directors, and the deposits applied to procure an act, which was obtained, for making a portion of the line, 40 miles only: *Held*, not a proper case for an order upon upon the petition of a scrip-holder under the original agreement for winding up the affairs of the company under the provisions of the Joint-Stock Companies' Winding-up Act, 1848. *Ex parte Fisher, in re Wesford and Valencia Railway Company*, 3 De G. & S. 116. See Appeal, 2; Substituted service.

[To be continued in our next Number.]

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, AUGUST 2, 1851.  
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LAW OF EVIDENCE AMENDMENT BILL.

THIS bill, as amended by the Commons Committee, and ordered to be printed on the 22nd July, is now before us, and it appears that the Committee have made an important alteration in the measure, despite of an intimation from the Attorney-General, that it would probably cause the rejection of the bill by the House of Lords.

As already stated, (ante, p. 174.) after discussion and deliberation, and without an expression of dissent from any peer, layman or lawyer, the House of Lords resolved, to amend the measure as originally introduced, by enacting that neither in civil nor criminal proceedings should a husband be competent or compellable to give evidence for or against his wife, nor a wife be competent or compellable to give evidence for or against her husband. For this salutary restriction the wisdom of the Commons could find no reason, and it was therefore resolved to *amend* the bill as sent down from the Lords, by substituting the words, "in any criminal proceeding," for the words, "in any proceeding *civil* or criminal." The presumed intention of this alteration is, to protect husband and wife from being competent or compellable to give evidence for or against each other in criminal cases only. In all civil proceedings, whatever may be their nature, (other than proceedings instituted in consequence of adultery, or for breach of promise of marriage,) a wife is to be competent or compellable to give evidence for or against her husband, and the husband competent or compellable to give evidence for or against his wife.

The power of annoyance which this provision will afford to excited litigants, and the fearful temptation to perjury that it

holds out, we believe have been totally overlooked by those who proposed and supported the changes thus introduced in the bill. The practical effect of the provision, undoubtedly, will be, to diminish litigation. Many a right-minded man would submit to pecuniary loss or injury rather than have his domestic privacy invaded, and his wife placed in the witness-box to be cross-examined upon every subject, pertinent and impertinent, suggested by an embittered adversary. But the cases in which justice would *not* be appealed to, because it may be purchased too dearly, are not the worst. The wives of England may expect, for the first time, to be exposed to the torture of being continually placed in the witness-box and compelled to choose between a betrayal of conjugal confidence, and a violation of the obligation of an oath. We earnestly trust, that a respect for female character and a consideration for female feeling, which is the foundation of all manly virtue, will yet interfere and preserve the wives of England from being subjected to such an alternative.

The remaining clauses of the bill, although comparatively insignificant, are not undeserving of notice. A new clause has been introduced in the Commons' Committee, to which we can see no objection, and which is in the following terms:—

"And whereas it is expedient, as far as possible, to reduce the expense attendant upon the proof of criminal proceedings: Be it enacted, That whenever in any proceeding whatever it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person, or a copy thereof, but a certificate containing the substance and effect only (omitting the formal part) of the indictment, trial, conviction, and judgment, or acquittal, as the case may be, purporting to be

signed by the clerk of the Court, or other officer having the custody of the records of the Court where such conviction or acquittal took place, or by the deputy of such clerk or other officer, (for which certificate a fee of six shillings and eightpence, and no more, shall be demanded or taken,) shall for all purposes be sufficient evidence of the facts therein alleged, without proof of the signature or official character of the person appearing to have signed the same."

There is a subsequent clause, however, which, if it be really desired to preserve any regard for the sanctity of an oath in the administration of justice, we hope may be re-considered. The clause (which is numbered 17) is in these words:—

"Every Court, judge, justice, officer, commissioner, arbitrator, or other person, now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively."

At present oaths are administered, either by the express authority of acts of parliament, or with the express sanction of the established courts of justice. Under this clause, any two persons may authorise a third to hear evidence and administer an oath in reference to any subject—the most trivial or important—from a game at skittles to the commission of a capital offence. Surely, this is not the course in which legislation should proceed if it be expedient that an oath should be considered as a solemn obligation binding on the conscience?

AMENDED CHARITABLE TRUSTS' BILL.

The Amendments of this Bill made in the Select Committee of the House of Lords, are in substance as follow:—

The Lord Chancellor instead of the Treasury is authorized to appoint the Commissioners; s. 1.

Proceedings may be instituted under the fiat of the Attorney-General as well as the Commissioners; s. 10.

The District Courts of Bankruptcy as well as the County Courts, are to have jurisdiction in charities not exceeding 30*l.*; s. 40, &c.

The rights and privileges of the Church of England are reserved; s. 56.

There is to be no power of application *ex parte* under the jurisdiction created by the act, except such as can be exercised by the Court of Chancery; s. 57.

Notice to be published of applications for schemes or removal or appointment of trustees under the act; s. 58.

The Deputy sitting for the County Court Judge is not to exercise jurisdiction under the act; s. 65.

Some alterations are also made in the clauses as to exchanges and rent-charges; ss. 71, 72.

The rights of special visitors are saved; s. 83.

The provisions and exemptions regarding charities supported partly by voluntary contributions are defined by s. 83, which we give *verbatim*.

1st. *As to institutions wholly exempted.*—
"That this act, or any of the provisions therein contained, shall not extend or apply to either of the Universities of Oxford or Cambridge, nor to any college or hall therein, nor to any cathedral or collegiate church in England or Wales, nor to the British Museum, nor any friendly or benefit society or savings bank, nor to any institution, establishment, or society for religious or other charitable purposes; or to the auxiliary or branch associations connected therewith, wholly maintained by voluntary contributions;

2nd. *Where any charity is or shall be maintained partly by voluntary subscriptions, and partly by income arising from any endowment.*—
"The powers and provisions of this act with respect to every such charity shall extend and apply to such income from endowment only, to the exclusion and exemption of all such voluntary subscriptions and the expenditure and application thereof, and that no donation or bequest unto, or in trust for, any such charity as last aforesaid, of which no special application or appropriation shall be directed or declared by the donor or testator, and which may legally be applied by the governing body of such charity as income in and of the voluntary subscriptions, shall be subject to the jurisdiction or control of the Commissioner, or the powers and provisions of this act; and that no portion of any such donation or bequest as last mentioned, or of any voluntary subscription, which is now or shall or may from time to time be set apart or appropriated and invested by the governing body of the charity, for the purpose of being held and applied or expended for or to some defined and specific object or purpose connected with such charity, in pursuance of any rule or resolution made or adopted by the administrative body of such charity, or of any donation or bequest in aid of any fund so set apart or appropriated for any such object or purpose as aforesaid, shall be subject to the jurisdiction or control of the said Commissioner, or the powers or provisions of this act.

"And that nothing in this act shall subject the funds or property of any missionary or

other similar society, or the missionaries, teachers, or officers of such society, or of any branch thereof, which funds or property shall not be within the limits of England and Wales, or the jurisdiction of the said Commissioners."

It will be seen by this clause that the objection to which we have often adverted, of subjecting charitable institutions partly voluntary to the jurisdiction of the Commissioners, is admitted to be well-founded, and under the provisions now proposed the intended grievance will be diminished. The rules and orders which the Lord Chancellor is empowered to make may remove any practical difficulties not yet foreseen; but we still remain unconvinced of the necessity of a permanent Commission, whose power over the commencement and conduct of legal proceedings seems to be wholly uncalled for. The creation of a summary and comparatively inexpensive jurisdiction, to correct any abuses in small charities, is undoubtedly required, either before the Local Courts or the Masters in Chancery; but with due powers conferred on those tribunals, it seems quite unnecessary to superadd an expensive staff of superintending Commissioners or officers. However, there will be time before another Session to consider the bill as now amended.

POSTPONEMENT OF THE CERTIFICATE DUTY BILL.

Our readers who perused the full report we gave of Lord Robert Grosvenor's speech on the 8th July, on moving for leave to bring in the Bill to repeal the Certificate Duty, would perceive that, unless the Chancellor of the Exchequer assented to the proposition, it was impossible to carry it this Session.¹ Nevertheless, it was important again to take the sense of the House on the principle of the Bill. There has thus, indeed, been another *verdict* in its favour. Opposed by the whole force of government,—there being not less than 33 members holding office who voted in the minority,—the decision which was come to, in a House of nearly 300 members, is conclusive of the fate of the Tax next Session.

We have been asked, why did not Lord R. Grosvenor proceed further with the bill this Session? The answer is—that it was impossible after the 8th July to pass it through both Houses, against the will of the ministry. At some later stage, it would probably have come on in the middle of the

night, in a comparatively thin house, and been defeated. The majority already gained would then have lost much of its weight.

But we conceive that the Chancellor of the Exchequer is pledged to offer no opposition to the bill next Session. He distinctly stated in the last debate, that if both sides of the House thought the tax ought to be taken off, he would offer no further opposition. The House divided on that issue, and affirmed the principle of the bill; but it was clearly on the understanding that the financial plan of this Session should not be disturbed; and it was impossible for Lord R. Grosvenor to proceed further in the present Session.

We are, however, not surprised that, with so large a majority in its favour, some disappointment should be felt at the withdrawal of the bill; but we are persuaded that the Noble Mover exercised a sound discretion in the course he adopted. It might have been otherwise if the untoward events of the early part of the Session had not delayed the motion till July. Our readers need scarcely be reminded, by the example of the delays in the progress of many popular Bills, that an opposition, (especially if conducted by the Government,) can at any time retard the progress of a measure. Members, not of the Government, have to ballot each time for their position on the list of public business; and even when fortunate in drawing an early number, they are liable to be displaced by the adjournment of previous matters, or the want of a sufficient House.

The most sanguine expectation is entertained by the promoters of the repeal, that it will be successful next Session.

PRACTITIONERS BEFORE THE COUNTY COURTS.

By the 89th of the General Rules and Orders for regulating the Practice and Proceedings of the County Courts, it is directed that "no attorney shall be allowed to appear for any person in a County Court, until he has signed a roll or book to be kept by the clerk for that purpose, but no fee shall be payable for that purpose."

We understand that some of the judges act very strictly in this respect and will not allow the managing clerk of an attorney to appear for his employer, although such clerk is on the roll of the Superior Courts, unless he be also duly certificated.

¹ See page 189, ante.

REPEAL OF CERTIFICATE DUTY.

PETITIONS PRESENTED.

From Societies.

Incorporated Law Society, U. K. . . .	Lord R. Grosvenor
Society of Writers to Her Majesty's Signet of Scotland . . .	Mr. F. Mackenzie
Solicitors practising before Court of Session in Edinburgh . . .	Lord R. Grosvenor
Society of Solicitors in Supreme Court of Scotland . . .	Mr. Cowan
Society of Solicitors-at-Law, Edinburgh . . .	Sir Wm. Gibson Craig
Society of Advocates in Aberdeen . . .	Mr. Duncan
Society of Attorneys and Solicitors of Ireland . . .	Mr. Geo. Hamilton
Dean and Faculty of Procurators in Glasgow . . .	Mr. M ^c Gregor
Members of Faculty of Procurators in Paisley, Renfrewshire . . .	Mr. Archibald Haastie
Society of Solicitors of Banffshire . . .	Mr. James Duff

From Cities and Towns in England.

Abergavenny . . .	Mr. Geo. Sandars
Arundel . . .	Mr. Richard Prime
Ashburton . . .	Col. Ashburton
Ashton-under-Lyne . . .	Mr. Hindley
Atherstone . . .	Mr. Newdegate
Barnard Castle . . .	Mr. Farrer
Barnsley . . .	Mr. B. Denison
Barton-upon-Humber . . .	Mr. Christopher
Bath . . .	Viscount Duncan
Battle . . .	Mr. Frewen
Bicester . . .	Lord Norreys
Bideford . . .	Mr. Buck
Billericay . . .	Lord R. Grosvenor
Birkenhead . . .	Lord R. Grosvenor.
Birmingham . . .	{ Mr. Muntz
Blackburn . . .	{ Mr. Scholefield
Bolton . . .	Mr. Hornby
Bolton . . .	Mr. Blair
Bradford, Wilts . . .	Mr. Sotheron
Bridgnorth . . .	Sir Robt. Pigot
Bridlington . . .	Mr. Broadley
Bristol . . .	Mr. P. Miles
Buckingham . . .	Col. Hall
Bungay . . .	Mr. Gooch
Burnley . . .	Mr. Heywood
Chard . . .	Mr. Moody
Chelmsford . . .	Sir Edward Buxton.
Cheltenham . . .	Mr. G. Berkeley
Chester . . .	Lord R. Grosvenor
Chorley . . .	Mr. Heywood
Cirencester . . .	Mr. Mullings
Clare, Suffolk . . .	Mr. P. Bennet
Clitheroe . . .	Mr. M. Wilson
Coleford . . .	Marquis of Worcester
Colne . . .	Lord R. Grosvenor

Conington . . .	Lord R. Grosvenor
Cranbrook . . .	Mr. Law Hodges
Crewkerne . . .	Mr. Moody
Cumberland . . .	Mr. Chas. Howard
Deal . . .	Mr. Grenfell
Deddington . . .	Mr. Henley
Delph, Saddleworth . . .	Mr. B. Duncan
Devises . . .	Mr. Long
Doncaster . . .	Lord R. Grosvenor
Dover . . .	{ Mr. Rice
Dunstable . . .	{ Sir Geo. Clerk
Dursley . . .	Col. Gilpin
Epworth . . .	Mr. Hale
Exeter . . .	Lord R. Grosvenor
Fareham . . .	Mr. Bremridge
Falkstone . . .	Mr. Willcox
Folkstone . . .	Mr. Brockman
Glastonbury . . .	Mr. W. Wiles
Gosport . . .	Mr. Compton
Great Marlow . . .	Col. Knox
Halifax . . .	Mr. Edwards
Hanley . . .	Mr. J. L. Ricardo
Hertford . . .	Mr. Halsey
Hexham . . .	Mr. Seville Ogle
Holbeach . . .	Sir John Trollope
Honiton . . .	Sir Jas. Hogg
Hull . . .	Mr. Clay
Kettering . . .	Mr. Stafford
Knaresborough . . .	Mr. Geo. Hamilton
Lancaster . . .	Mr. Armstrong
Ledbury . . .	Mr. Booker
Leighton Buzzard . . .	Col. Gilpin
Liverpool . . .	Sir Thos. Birch
Loughborough . . .	Mr. Packe
Louth . . .	Mr. Christopher.
Lyme Regis . . .	Lord R. Grosvenor
Manchester . . .	Mr. Henry
Margate . . .	Mr. Deedes
Market Drayton . . .	Mr. J. Dod
Melksham . . .	Mr. Sotheron
Monmouth . . .	Mr. O. Morgan
Nantwich . . .	Lord R. Grosvenor
Newark-on-Trent . . .	Mr. John Stuart
Newcastle-on-Tyne & Gateshead . . .	Mr. Headlam
New Malton . . .	Mr. Cayley
Newnham . . .	Sir Wm. Codrington
Newton Abbott . . .	Sir J. Y. Buller
Northampton . . .	Mr. Stafford
Nuneaton . . .	Mr. Newdegate
Oldham . . .	Mr. Johnson Fox
Ottery St. Mary . . .	Sir Ralph Lopes
Petworth . . .	Mr. Prime
Portsmouth and Portsmouth-sea . . .	Mr. Compton
Preston . . .	Sir Geo. Strickland
Richmond, Surrey . . .	Mr. Aleock
Richmond, Yorkshire . . .	Lord R. Grosvenor
Rington . . .	Mr. Cornwall Lewis
Ripon . . .	Sir James Graham
Romford . . .	Lord R. Grosvenor
Ross . . .	Mr. Cornwall Lewis
Saffron Walden . . .	Mr. Beresford
Sandwich . . .	Mr. Grenfell
Solihull . . .	Mr. Spooner
Southampton . . .	{ Mr. Bremridge
Stamford . . .	{ Mr. Compton
	Marquis of Granby

Stockton-on-Tees	Mr. Fawcett
Stowmarket	Mr. P. Bennett
Stratford-upon-Avon	Lord Brooke
Taunton	Sir Ralph Lopes
	{ Sir E. Filmer
Tenterden	{ Mr. Law Hedges
Thirsk	{ Sir Wm. Galloway
Thornbury	Marquis of Worcester
Trowbridge	Mr. Long
Uak	Mr. O. Morgan
Uttoxeter	Mr. Adderley
Wakefield	Mr. Geo. Sanders
Wallingford	Viscount Barrington
Warrington	Mr. Greenall
Wellingborough	Mr. Maunsell
Westmoreland	Col. Lowther
Weymouth and Melcombe Regis	Mr. F. Villiers
Whitby	Mr. Stephenson
Witney	Mr. Henley
Wolverhampton	Lord R. Grosvenor
Wotton-under-Edge	Mr. Hale
York	Mr. Smyth.

From Towns in Wales.

Cardigan	Mr. Morris
Carmarthen	Mr. Morris
Crickhowell and Brecon	Mr. Joseph Bailey
Dolgelly	Mr. R. Richards
Machynlleth	Mr. Pugh
Narbeth	Mr. John Evans
Newcastle Emlyn	Col. Trevor.
Rhithin	Mr. West
Swansea	Mr. John H. Vivian

Scotland, besides Petitions from eight Incorporated Societies previously mentioned.

Cupar, Fife	Mr. E. Ellice
Falkirk	Mr. Baird
Invernesshire	Mr. A. Matheson
Kircaldenshire	Gen. Arbuthnot
Kirkaldy	Col. Ferguson
Leith	Mr. Forbes
Perthshire	Lord R. Grosvenor
Stirling	Mr. Forbes

Ireland.

Cork	Col. Chatterton
Dublin	Mr. Geo. Hamilton
Kerry	Mr. John O'Connell
Limerick	Mr. Monnell
Londonderry	Captain Jones.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

PREVENTION OF OFFENCES.

14 & 15 VICT. c. 19.

Any person found by night armed, &c. with intent to break into any house and commit any felony therein, or having in his possession, without lawful excuse, any implements of housebreaking, or having his face disguised, or being found by night in any house with intent to commit any felony

therein, shall be guilty of a misdemeanor sect. 1.

Any person convicted of such misdemeanor after a previous conviction of felony or such misdemeanor, guilty of misdemeanor, &c. Form of indictment. Certificate of previous conviction; s. 2.

Persons using chloroform, &c. in order to commit a felony, guilty of felony; s. 3.

Persons inflicting grievous bodily harm, guilty of a misdemeanor, and liable to three years imprisonment. Not to repeal section 29 of 10 Geo. 4, c. 34; s. 4.

On the trial of any indictment for feloniously cutting, &c. the jury may acquit of the felony, and convict of unlawfully cutting, &c.; s. 5.

Persons willingly placing wood, &c. on railways, taking up rails, &c. turning machinery, or showing signals, &c., with intent to commit injuries to railway or endanger the safety of persons, guilty of felony; s. 6.

If any person shall cast any wood, &c. upon any railway carriage with intent to endanger the safety of any person therein, such person to be guilty of felony, &c.; s. 7.

Any person willfully setting fire to any railway station, &c. guilty of felony; s. 8.

Upon the trial of persons for subsequent offences under the 12 & 13 Vict. c. 11 and this act, the previous conviction not to be stated to the jury or given in evidence until after a verdict of guilty of the subsequent offence, unless the defendant gives evidence of good character; s. 9.

Any person may apprehend persons committing offences against this act, and convey them before a justice; s. 10.

Any person may apprehend persons committing indictable offences in the night and convey them before a justice; s. 11.

Any person assaulting a person, entitled to apprehend him, to be guilty of a misdemeanor; s. 12.

The night, in offences against this act, to be as in burglary; s. 13.

Costs of prosecutions; s. 14.

Nothing in this act to repeal 5 Geo. 4, c. 83; s. 14.

Not to extend to Scotland; s. 15.

The clauses of the act are as follow:—

An Act for the better Prevention of Offences. [3rd July, 1851.]

Whereas it is expedient to make further provisions for the prevention of burglary and other offences in the night: That—

1 If any person shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever with intent to break or enter into any dwelling-house or other building whatsoever and to commit any felony

therein, or if any person shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock key, crow, jack, bit, or other implement of housebreaking, or if any person shall be found by night having his face blackened or otherwise disguised, with intent to commit any felony, or if any person shall be found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the Court to be imprisoned, with or without hard labour, for any term not exceeding three years.

2. If any person shall be convicted of any such misdemeanor as aforesaid committed after a previous conviction, either for felony or such misdemeanor as aforesaid, such person shall on such subsequent conviction be liable, at the discretion of the Court, to be transported beyond the seas for any term not less than seven years, and not exceeding ten years, or imprisoned, with or without hard labour, for any term not exceeding three years; and in any indictment for such misdemeanor committed after a previous conviction as aforesaid it shall be sufficient to state that the offender was at a certain time and place convicted of felony or misdemeanor against "The Act for the better Prevention of Offences, 1851," (as the case may be,) without otherwise describing the previous felony or misdemeanor; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony or misdemeanor, purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court where the offender was first convicted, or by the deputy of such clerk or officer, (for which certificate a fee of five shillings and no more shall be demanded or taken,) shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same.

3. And whereas it is expedient to make further provision for the punishment of persons using chloroform or other stupefying things in order the better to enable them to commit felonies: be it enacted, That if any person shall unlawfully apply or administer, or attempt to apply or administer, to any other person any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent thereby to enable such offender or any other person to commit, or with intent to assist such offender or other person in committing, any felony, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported for life or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years.

4. And whereas it is expedient to make fur-

ther provision for the punishment of aggravated assaults: Be it enacted, That if any person shall unlawfully and maliciously inflict upon any other person, either with or without any weapon or instrument, any grievous bodily harm, or unlawfully and maliciously cut, stab, or wound any other person, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned, with or without hard labour, for any term not exceeding three years: Provided, however, that nothing herein contained shall be deemed or taken to repeal the provisions of Sect. 29 of 10 Geo. 4, c. 34.

5. If upon the trial of any indictment for any felony, except murder or manslaughter, where the indictment shall allege that the defendant did cut, stab, or wound any person, the jury shall be satisfied that the defendant is guilty of the cutting, stabbing, or wounding charged in such indictment, but are not satisfied that the defendant is guilty of the felony charged in such indictment, then and in every such case the jury may acquit the defendant of such felony, and find him guilty of unlawfully cutting, stabbing, or wounding, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for the misdemeanor of cutting, stabbing, or wounding.

6. If any person shall wilfully and maliciously put, place, cast, or throw upon or across any railway any wood, stone, or other matter or thing, or shall wilfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall wilfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall wilfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall wilfully and maliciously do or cause to be done any other matter or thing, with intent in any of the cases aforesaid, to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck, using such railway, or to endanger the safety of any person travelling or being upon such railway, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his natural life or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years.

7. If any person shall wilfully and maliciously cast, throw, or cause to fall or strike against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to endanger the safety of any person being in or upon such engine, tender, carriage, or truck, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his

material life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years.

8. If any person shall wilfully and maliciously set fire to any station, engine-house, warehouse, or other building belonging or appertaining to any railway, dock, canal, or other navigation, every such person shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court, to be transported beyond the seas for the term of his natural life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years; and if any person shall wilfully and maliciously set fire to any goods or chattels being in any building, the setting fire to which is made felony by this or any other act of parliament, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for any term not exceeding ten years nor less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years.

9. And whereas provision is made in a certain act of parliament passed in the 12 & 13 Vict., intituled "An Act to amend the Law in England and Ireland relative to Larceny and other offences connected therewith," and also in this act, for the more exemplary punishment of persons who shall commit certain offences after one or more previous conviction or convictions for the like or other offences, and it is expedient to define the time of charging the jury to inquire as to such previous conviction or convictions: Be it enacted, That it shall not be lawful on the trial of any person for any subsequent offence, where a plea of not guilty shall have been entered on his behalf, to charge the jury to inquire concerning any previous conviction until they shall have inquired concerning such subsequent offence, and shall have found such person guilty of the same; and whenever in any indictment any previous conviction shall be stated the reading of such statement shall be deferred until after such finding as aforesaid: Provided, that if upon the trial of any person for any such subsequent offence as aforesaid such person shall give evidence of his good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences, before such verdict of guilty shall have been returned, and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

10. It shall be lawful for any person whatsoever to apprehend any person who shall be found committing any offence against the provisions of this act, and to convey him or deliver him to some constable or other peace officer, in order to his being conveyed, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law.

11. And whereas doubts have been entertained as to the authority to apprehend persons found committing indictable offences in the night: For remedy thereof be it enacted, That it shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence in the night, and to convey him or deliver him to some constable or other peace officer, in order to his being conveyed, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law.

12. If any person liable to be apprehended under the provisions of this act shall assault or offer any violence to any person by law authorized to apprehend or detain him; or to any person acting in his aid and assistance, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned, with or without hard labour, for any term not exceeding three years.

13. The time at which the night shall commence and conclude in any offence against the provisions of this act shall be the same as in cases of burglary.

14. In all prosecutions for any offence against the provisions of this act, it shall be lawful for the Court before which any such offence shall be prosecuted or tried to allow the expenses of the prosecution in all respects as in cases of felony.

15. Nothing in this act contained shall be deemed to repeal wholly or in part the 5 Geo. 4, c. 83, intituled "An Act for the Punishment of idle and disorderly Persons and Rogues and Vagabonds," in that Part of Great Britain called England," but no person shall be liable to be punished for the same offence both under the said last-mentioned act and under this act.

16. Nothing in this act shall extend to Scotland.

COMMON LAW REFORM.

RECOMMENDATIONS OF THE COMMISSIONERS.

[Concluded from p. 236, ante.]

Special Juries.

77. That in London and Middlesex the special juries be nominated and reduced by the under-sheriff of Middlesex and secondary of London, in like manner as is now done before the Masters of the Superior Courts.

78. That in all the counties, except London and Middlesex, a precept shall be issued to the sheriffs, directing them to summon a number of special jurymen, say forty-eight in counties in which many special jury causes are usually tried, and a smaller number in other counties; that the persons so summoned shall be the jury for trying the special jury causes at the assizes; that each party shall have a limited right of challenge; and that, for the purpose of meeting some cases of an extraordinary character where local prejudice is alleged to prevail, a power may be given to

the Court or a judge to direct that a jury shall be struck according to the present practice.

79. That in any county, except London and Middlesex, the mode of obtaining a special jury by a plaintiff, except in replevin, shall be by his giving a notice to the defendant of his intention that the cause shall be tried by a special jury, which notice shall be given at such time as would be necessary for a notice of trial; and that, except in London and Middlesex, the mode of obtaining a special jury by a defendant or a plaintiff in replevin, shall be by giving a notice within the time now limited for a defendant or a plaintiff in replevin obtaining a special jury; provided that a judge may, on summons, at any time order that a cause shall be tried by a special jury.

80. That where the defendant or plaintiff in replevin gives such notice, and the venue is in London or Middlesex, the Court or a judge shall have power, if satisfied that such notice is given for delay, to order that the cause be tried by a common jury, or to make such other order as to the trial of the cause as they or he may think fit.

81. That either party in any action in which notice has been given to try by special jury may, six days before the first day of the sittings or commission day, give notice to the sheriff that the action is to be tried by a special jury; and in case no such notice be given no special jury need be summoned, and the cause may be tried by a common jury.

82. And that in all cases where a special jury is not summoned, the cause may be tried by a common jury.

View.

83. That the proceedings in the case of a view shall be by rule instead of writ.

84. That the sheriff, upon request, shall deliver to the parties the names of the viewers, and also to return their names to the associate, for the purpose of their being called as jurymen upon the trial.

Admission of Documents.

85. That the rule 10 of Hilary Term, 4 W. 4, as to admission of documents, be altered by giving a similar effect to the notice to admit as the order of the judge now has under that rule; that is to say, that either party may call on the other by notice to admit any document, and in case of refusal or neglect to admit that the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the admission required was unreasonable; and that no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is in the opinion of the Master a saving of expense.

86. That an affidavit of the attorney in the cause, or his clerk, of the due signature of the admissions annexed to such affidavit, shall be in all cases sufficient evidence of the same.

87. That an affidavit of the attorney in the

cause, or his clerk, of the service of any notice to produce, in respect of which notice to admit shall have been given, and of the time when it was served, with a copy of such notice annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served.

Execution.

88. That a plaintiff or defendant having obtained a verdict in a case tried out of term shall be entitled to issue execution in 14 days, unless the judge who tries the cause, or some other judge, or the Court, shall otherwise order, with or without terms.

89. That it shall not be necessary to issue a ground writ, or writ directed to the sheriff of the venue county, but that writs of execution may issue at once into any county, and be directed to and executed by the sheriff of any county, whether a county palatine or not, without reference to the county in which the venue is laid, and without any suggestion of the issuing of a prior writ into such county.

90. The writs to be executed in the counties palatine shall be directed to the sheriff of such counties and returned by them.

91. That in all writs of execution against the goods of a plaintiff, the defendant may levy the poundage fees and expenses of execution, over and above the sum recovered by the judgment, in like manner as a plaintiff may.

92. That a writ of execution, unexecuted, shall not remain in force for more than one year from the teste, unless renewed; but that it shall be competent to the party issuing the writ to renew it, in the same manner as we have already proposed with respect to writs of summons, or by giving a written notice to the sheriff, signed by the party or his attorney, and bearing the seal or stamp of the Court, and thereby secure priority according to the original delivery.

93. That the attorney in the cause shall have authority to discharge the opposite party out of execution on a *capias ad satisfaciendum*, unless the client gives notice to the contrary to the sheriff, gaoler, or person in whose custody the party may be; the imprisonment and the discharge to be no satisfaction of the debt, unless the discharge be made by the authority of the creditor.

94. That a person already in the prison of the Court may be charged in execution, without *habeas corpus ad satisfaciendum*, by order of a judge, on affidavit that judgment has been signed and is not satisfied; and that service of such order on the keeper of the prison shall have the effect of a detainer.

Scire Facias.

95. That during the lives of the parties to a judgment, or those of them during whose lives execution may at present issue within a year and a day without a *scire facias*, and within six years from the recovery of the judgment, execution may issue without a revival of the judgment.

96. In cases where it becomes necessary, by

reason either of lapse of time or of a change by death or otherwise of the parties entitled or liable to execution, that the party alleging himself to be entitled to execution shall be allowed, either to sue out a writ in the nature of a scire facias, to be called a writ of revivor, according to the form set forth in Appendix B, No. 6, or to apply to the Court or a Judge for leave to enter a suggestion upon the roll to the effect that it manifestly appears to the Court that he is entitled to execution of the judgment, and to issue execution thereupon, such leave to be granted by the Court or a Judge upon a rule to show cause, or a summons, to be served as at present, or in such other manner as may be directed by such Court or Judge, which rule or summons may be in the form given, Appendix B, No. 7, and that upon such application, in case it manifestly appears that the party making the same is entitled to execution, the Court or Judge shall allow such suggestion to be entered in the form given, Appendix B, No. 8, and execution to issue, and order whether or not the costs of the application shall be paid to the applicant, and in case it does not manifestly so appear shall discharge the rule or dismiss the summons, with or without costs; and that the party applying shall in such case nevertheless be at liberty to proceed by scire facias or action upon the judgment.

97. That the writ of revivor shall be directed to the party called upon to show cause why execution should not be awarded; that it shall bear date on the day of its issuing, and after reciting the reason why such writ has become necessary, shall call upon the party to whom it is directed to appear within eight days, after service thereof, in the Court out of which it issues, to show cause, &c.; and that it shall be served in any county, and otherwise proceeded upon in the same manner as a writ of summons in an ordinary action.

98. That the same alterations be made in writs of scire facias for other purposes, such as against bail on their recognizance ad audiendum errores against members of a joint-stock company on a judgment recovered against a public officer, and the like.

99. The name of scire facias will, strictly speaking, be inapplicable to the altered form of process, which will not contain the words from which that name was taken; we propose, therefore, it should be called a writ of revivor.

Arrest of Judgment, and Judgment Non Obstante Verdicto.

100. That a party shall be at liberty, after the trial of an issue on fact (as by the present practice), to move in arrest of judgment, or for judgment non obstante verdicto, or, where there has been no opportunity of so doing, to move on like grounds to set aside the judgment, but that no such motion shall be allowed except upon the terms of payment by the party moving of the costs occasioned by the trial of the issues arising out of the defective pleading; and that the Court shall have power to make all such amendments as may appear, either by

the Judge's notes or by other satisfactory proofs to be justified by the facts of the case, such costs to be awarded by the judgment of the Court upon arresting the judgment, or giving judgment non obstante verdicto, or of reversal.

101. That upon motion made to arrest or set aside the judgment, or for judgment non obstante verdicto, by reason of the non-avowment of some alleged material fact or facts, or material allegation or other cause, the party whose pleading is said or adjudged to be defective shall be at liberty to show that such facts were proved at the trial, or, with leave of the Court, to suggest the existence of the omitted fact or facts or other matter, which, if true, would remedy the alleged defect; and that such suggestion, if denied by the opposite party, shall be tried; and that if the fact or facts suggested be found to be true, the party suggesting shall be entitled to such judgment as he would be entitled to if such fact or facts or allegations had been originally stated in such pleading, together with the costs of and occasioned by the suggestion; but that if it be found to be untrue, the opposite party shall be entitled to his costs of and occasioned by the suggestion, in addition to any other costs to which he may be entitled.

Error.

102. That no error in law shall be assigned except upon a judgment of the Court actually given, either upon demurrer or special verdict, or motion to arrest or set aside the judgment, or for judgment non obstante verdicto, but that this regulation shall not extend to the case of error on bills of exceptions.

103. That error shall not be brought after six years from the time of signing judgment.

134. That the writ of error be abolished, and the proceedings to error be a step in the cause; and that the course of proceeding be as follows:—

105. The party alleging error in law shall deliver to one of the Masters of the Court a memorandum alleging error, whereupon the Master shall deliver to him a note of its receipt, of which note a copy shall be served on the opposite party, together with a statement of all grounds of error intended to be argued; the service of such note shall have the same effect and be followed up by the same proceedings as the service of the notice of allowance of a writ of error in law.

106. The party alleging error in fact shall in like manner deliver to one of the Masters a memorandum alleging error, accompanied by an affidavit of the truth of the alleged error; whereupon the Master shall deliver to him a note of its receipt; a copy of which note, together with a copy of the affidavit of the truth of the error alleged, shall be served on the opposite party; the service of such notice shall have the same effect as the service of the rule for allowance of a writ of error in fact as at present; and the subsequent proceedings in error in fact coram nobis or vobis shall be the same as at present.

107. With respect to error in law, That the assignments of and joinder in error be abolished, and a suggestion to the effect that error is alleged by the one party and denied by the other shall be entered on the judgment roll, which roll, and not a transcript, shall, without any return by the Chief Judge of the Court, be brought by the Master into the Exchequer Chamber on the day of its sitting, and shall be a sufficient warrant for the Court of Error to adjudge upon the errors in law, if any, in the record.

108. That Courts of Error shall in all cases have power to give such judgment and award such process as the Court below ought to have done, without regard to the party alleging error.

Amendment.

109. That the Superior Courts of Westminster Hall, and every judge thereof, and Courts sitting at Nisi Prius, shall have at all times the power of amending all defects and errors in any proceeding in civil causes, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party or not; and all such amendments may be made with or without costs as to the Court or judge may seem fit; and that all such amendments as may be necessary for the purpose of determining (in the existing suit) the real question in controversy between the parties shall be made.

Ejectment.

110. That instead of the present proceeding by ejectment a writ be issued, directed to the persons in possession by name, and all persons entitled to defend the possession of the property claimed, which shall be described in the writ with reasonable certainty.

111. That the writ shall state the names of all the persons in whom the title is alleged to be, and command the persons to whom it is directed to appear within a given number of days in the Court from which it issued, to defend the possession of the property sued for, or such part thereof as they may be advised, and shall contain a notice that in default of appearance they will be turned out of possession. The form of the writ will be found in Appendix B. No. 9.

112. That the writ be dated of the day on which it is issued, and be in force for a year.

113. That it be served in the same manner as an ejectment is at present served, or in such manner as the Court or a judge shall order; and in case of vacant possession by posting a copy thereof upon the door of the dwelling-house or other conspicuous part of the property.

114. That the persons named as defendants in the writ, or either of them, shall be allowed to appear within the time appointed.

115. That any other person shall be allowed to appear, on filing an affidavit that he is in possession of the land either by himself or his tenants.

116. That an appearance without a notice

confusing the defence to part shall be considered as a defence for the whole.

117. That any person appearing shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty, in a notice entitled in the Court and cause, and signed by the party appearing or his attorney, to be served within four days after appearance upon the attorney whose name is endorsed on the writ, if any, and if none then to be filed in the Master's office.

118. That want of "reasonable certainty" in the writ or notice shall not nullify them, but only be ground for an application to a judge for better particulars of the land claimed or defended, which a judge shall have power to give in all cases.

119. That the Court or a judge shall have power to strike out or confine defences set up by persons not in possession by themselves or their tenants.

120. That in case no appearance shall be entered within the time appointed, or if an appearance be entered, but the defence be limited to part only, the plaintiffs shall be at liberty to sign a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply; which judgment may be in the form contained in Appendix B. No. 10.

121. That in case an appearance shall be entered, an issue may at once be made up without any pleadings by the claimants or their attorney, setting forth the writ, and stating the fact of the appearance, with its date, and the notice limiting the defence, if any, of each of the persons appearing, so that it may appear for what part defence is made, and directing the sheriff to summon a jury.

122. That, by consent, and leave of a judge, a special case may be stated, as at present; and that, by consent, such special case may be taken before a Court of Error, in the same way as a special verdict, and that the Court of Error shall have the same powers as the Court below to determine such special case.

123. That the claimants may, if no special case be agreed to, proceed to trial upon the issue, in the same manner as in other actions; and the question at the trial shall, except in the cases hereinafter mentioned, be, whether the statement in the writ of the title of the claimants is true or false, and, if true, then which of the claimants is entitled.

124. That the jury may find a special verdict, or either party may tender a bill of exceptions, as at present.

125. That upon a finding for the claimants judgment may be signed, and execution issue for the recovery of possession, and costs, as at present in the action of ejectment.

126. That upon a finding for the defendants or any of them a judgment may be signed, and execution issue for costs against the claimants named in the writ.

127. That in case of such an action being brought by some of one of several parties as

titled as joint tenants, tenants in common, or coparceners, any joint tenant, tenant in common, or coparcener in possession may at the time of appearance, or within four days after, give notice, in the same form as in the notice of a limited defence, that he defends as such, and admits the right of the claimant to an undivided share of the property, but denies any actual ouster of him from the property, and within the same time file an affidavit stating the same facts with reasonable certainty, and such notice shall be entered in the issue in the same manner as the notice limiting the defence, and upon the trial of such an issue the additional question, of whether an actual ouster has taken place, shall be tried, as at present in an action of ejectment.

128. That the effect of a judgment in such an action shall be the same as that of a judgment in the present action of ejectment.

129. That the provisions of the several statutes affecting the action of ejectment as at present constituted, especially the statutes of 4 Geo. 2, c. 28, 1 Geo. 4, c. 87, 11 Geo. 4, & 1 Will. 4, c. 70, be made applicable by express enactment to the substituted proceedings.

130. That the several Courts and the judges thereof respectively shall and may exercise over the proceedings in the action the same jurisdiction which is at present exercised in the action of ejectment, so as to insure a trial of the title, and of actual ouster when necessary, only.

Officers and Fees at Nisi Prius and Judges Chambers.

131. That the duties of the Marshal and Clerk at Nisi Prius in the Queen's Bench, and Marshal and Associate in the Common Pleas and Exchequer, be performed by one officer in each Court, to be paid by salary, in like manner as the Masters of the Court now are under the statute passed in the first year of your Majesty's reign; that the office be held during good behaviour; the appointment to be, as at present, by the Chief Justices and Chief Baron.

132. That such officer be allowed to appoint one or two clerks, also at fixed salaries.

133. That convenient offices be provided for the transaction of the business in the offices of the respective Courts, or their immediate vicinity.

134. That a fixed sum be paid to the Marshal on each circuit for his services.

135. That the Associate on the circuits, where the duty is performed by a separate officer, shall be appointed in like manner as the Clerk of Assize, and paid by salary.

136. That the Chief Justices and Chief Baron may appoint three clerks, one of whom is to act as Crier on the circuit and in London and Middlesex, and the other judges two clerks each, one of whom is to act as Crier on the circuit.

137. That they shall continue to hold their office during good behaviour, except the clerk who attends personally on the judge, and that such clerk shall hold his office at will.

138. That all these clerks shall be paid by salaries.

139. That the fees hitherto received by these officers be altogether abolished.

Or, [if it be deemed expedient that the officers of the Court shall still be paid by fees imposed upon the suitors,] that the fees received in the several Courts, whether in Banc, Nisi Prius, or at Judges Chambers, shall be paid into one general fund to be applied in payment of the salaries of the officers and the official expenses of the Courts; and that any temporary surplus of that fund shall be retained and applied on the same account; and that a thorough revision of all fees shall be made by competent persons selected from the Masters of the Court, and new tables of fees framed by them (subject to the approval of the judges,) which tables shall be calculated to produce an amount sufficient for such payments, and no more; and that an officer (who may be one of the Masters) shall be appointed to superintend the accounts of the Courts, and to report from time to time as to any alteration or reduction in the fees which may appear necessary or beneficial.

COUNTY COURTS' EXTENSION.

THE Committee of the House of Commons on the amended bill, which stood appointed for Wednesday last, was postponed till Friday, the 1st August. As we go to press on that afternoon we cannot state the result. We shall look with no little curiosity at the terms of the clause as finally passed regarding the right of advocacy. Lord John Russell gave notice some days ago of his intention to move that on Friday the House at its rising should adjourn to Wednesday, the 6th August, with the view, we presume, of enabling the House of Lords to consider the remaining bills which are proposed to be passed.

The amendments of which Mr. Mullings has given notice will be useful, *if the bill should pass*. They have been suggested by the Incorporated Law Society, and show that there is no indisposition on the part of the attorneys to promote useful reforms. The following are the amendments referred to:—

1st. That witnesses may be examined before Commissioners in Bankruptcy and Judges of the County Courts for the purpose of obtaining evidence in support of motions and petitions in Chancery, where voluntary affidavits cannot be procured.

2nd. That pleas, answers, and affidavits may be sworn in Scotland, Ireland, the Channel Islands, or the Colonies before any Court, judge, notary public, or other person authorised to administer oaths, without the expense of authenticating their signatures.

3rd. That the Commissioners in Bankruptcy, Judges of County Courts, and Perpetual Commissioners may take the examination of married women as to the disposal of their interest in any fund in the Court of Chancery, in order to save the expense of petitions and orders which are granted as of course.

4th. That the Courts at Westminster, or a Judge at Chambers, shall make an order entitling a plaintiff to recover his costs in actions for sums less than 20*l.* in the Superior Courts, where such actions are not within the jurisdiction of the County Court, or where a concurrent jurisdiction is preserved in the Superior Courts.

NOTES OF THE WEEK.

BAR ETIQUETTE.

THE pamphlet of Mr. James Stephen, of the Middle Temple, "in reference to the rule requiring the intermediary agency of an Attorney between Counsel and Client," has been received, and the remarkable proposal which it embodies will be considered in an early number.

BILLS POSTPONED.

House of Lords.

Masters' Jurisdiction in Equity.

House of Commons.

Attorneys' and Solicitors' Certificate Duty.
Registration of Assurances.
Enfranchisement of Copyholds.
Audit of Railway Accounts.
County Rates and Expenditure.

CLOSE OF THE SESSION.

It is expected that the Session will close on Friday next, the 8th inst.

LAW APPOINTMENTS.

A VACANCY has been occasioned in the offices of Deputy Judge Advocate and Recorder of Exeter by the death of Francis James Newman Rogers, Esq., Q. C., of the Western Circuit, who was called to the Bar on the 21 May, 1816, by the Hon. Society of Lincoln's Inn.

We are informed that Stephen Charles Denison, Esq., of the Midland Circuit, has been appointed Deputy Judge Advocate. Mr. Denison was called to the Bar the 22nd November, 1839, by the Hon. Society of the Inner Temple.

NEW MEMBERS OF PARLIAMENT.

Thomas Collins, jun., Esq., for Knaresborough in the room of The Right Honourable William Sebright Lascelles, deceased.

The Right Honourable Edward Strutt for Arundel, in the room of The Earl of Arundel and Surrey, who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

George Frederick Young, Esq., for Scarborough, in the room of the Earl of Mulgrave, who has accepted the office of Comptroller of her Majesty's Household.

CONCLUSION OF THE EQUITY SITTINGS.

The Lord Chancellor, the Master of the Rolls, and the Vice-Chancellor, will close their labours on Friday, the 8th instant, except as to some few cases, on which judgment will be afterwards delivered.

Then will Lincoln's Inn "a solemn stillness hold."

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

In re Uppell's Trust. April 25, July, 1851.

LUNATIC.—NOT SO FOUND BY COMMISSION.

—PAYMENT OF EXPENSES INCURRED BY PARISH OUT OF FUNDS IN COURT.

A petition was granted for an order to pay out of certain moneys which had been paid into Court under the 10 & 11 Vict. c. 96, belonging to a lunatic, of the expenses which the parish to which he belonged had been put on his account, although no commission had been issued.

S. Miller appeared in support of a petition on behalf of the guardians of the poor of Isleworth, to which this lunatic was chargeable, and who had been sent to Hanwell Asylum at the expense of his friends, for payment out of

Court of certain expenses incurred by them on his behalf, out of certain trust moneys to which the lunatic was entitled, under the will of his mother, and which her executors and trustees had paid into Court under the 10 & 11 Vict. c. 96. It appeared no commission had issued.

The Lord Chancellor, after taking time to consider, said, that there were three acts to which the attention of the Court had been directed, under the first of which (the 7 & 8 Vict. c. 101, s. 27,) the trustees were empowered to make the payment to the guardians of the poor themselves, and the receipts of the guardians would have been good discharges. By the 10 & 11 Vict. c. 96, the Court is placed in the position of the trustees, and, therefore, as the trustees might have done what is asked the

Court might do it. His lordship said he would settle the minutes after looking at the affidavits, and a few weeks afterwards made the order according to the prayer of the petition.

July 23.—*In re Guardians of Holborn Union*—Order for leave to clerk of union to receive the interest on moneys to which a lunatic was entitled.

— 23.—*Hervey v. Hewitt*—*Cur. ad. vult.*

— 25.—*In re Burton*—On petition, Master's report confirmed appointing new committees of lunatic's person and estate, with reference as to allowance to attendant.

— 25.—*In re Loveday*—Order on petition for payment of 200*l.* to lunatic to traverse inquisition.

— 25.—*In re Dyce Sombre*—Stand over.

— 25, 26, 28.—*In re Edwes*—Stand over.

— 24, 28, 29.—*Steinton v. Chadwick*—Appeal from the late Master of the Rolls—*Cur. ad. vult.*

— 29.—*Sturge v. Sturge*—Appeal from the late Master of the Rolls—Part heard.

Master of the Rolls.

Bolton v. Powell. June 13, 14, 1851.

BILL TO ENFORCE ADMINISTRATION BOND.—LEGAL PERSONAL REPRESENTATIVE OF ARCHBISHOP.—PROCEEDINGS AT LAW.

A bill was dismissed with costs seeking to put in force an administration bond, and for a declaration that S., who was the legal personal representative of the archbishop, to whom the bond was given, was a trustee for the benefit of the estate, to which it related, on the ground that proceedings to enforce the same should have been taken at law in the archbishop's name, and not in equity.

UPON the death, in 1815, of David Bolton, intestate, his son, William Bolton, took out letters of administration in the Prerogative Court of Canterbury, and entered into the usual administration bond, dated 18th Oct. 1815. The bill alleged that William Bolton, who died in 1817, had misapplied a sum of 5,796*l.* 5*s.* 11*d.*, which he had obtained possession of as administrator, and sought to enforce the bond against the sureties for that amount, praying a declaration that the sum was due from the administrator to his father's estate, and that the Hon. Charles Manners Sutton, as legal personal representative of the late archbishop, to whom the bond was given, was a trustee thereof for the benefit of the father's estate.

Russell and Glasse for the plaintiffs; *R. Palmer, Lloyd, Chandless, and Walpole*, for the several defendants.

The Master of the Rolls said, that the proceedings ought to have been taken at law in the archbishop's name and not in equity, to enforce the bond, and dismissed the bill with costs.

July 23, 24.—*Norris v. Wright; Norris v. Norris*—Decree in suit relating to replacing and investment of trust-moneys.

July 24.—*Matthews v. Brice*—Guardian to infant ordered to render his accounts.

— 25.—*Attorney-Gen. v. Mayor, &c. of South Molton and others*—Judgment on information relating to charity.

— 26.—*Land v. Wortley*—Reference to the Master as to title, &c., on claim for specific performance of contract.

— 26.—*Threlfall v. Ellis*—Interim injunction restraining completion of sale or disposing of cotton.

— 28.—*Coyle v. Alleyne*—Exceptions to bill for scandal and impertinence overruled, and costs reserved.

— 25, 26, 28, 29.—*Kent v. Jackson; Kent v. Pennell and others*—Bill dismissed, with costs.

— 29.—*Duke of Devonshire and others v. Eglin*—Stand over for a week, with leave to amend.

— 29.—*Minn v. Grant*—Objection allowed for want of parties, with leave to amend or file supplemental bill.

Vice-Chancellor Knight Bruce.

Letts v. Longman and others. July 17, 1851.

INJUNCTION TO RESTRAIN INFRINGEMENT OF COPYRIGHT.—NOTICE.—COSTS.

On making perpetual an injunction to restrain the infringement of a copyright in a work, and to which the defendant submitted, the Court held, that as the plaintiff had not made any remonstrance or application to the defendants previously to the motion for the injunction, and the defendants had consequently had no opportunity of instituting inquiries and abstaining from further infringement, he was only entitled to his costs from the time of service of the notice.

IN this case a motion had been made on June 12 last for an injunction to restrain the defendants from printing, publishing, selling, or otherwise disposing of any copies of a work called "*Letts's Post Office Guide*," on the ground of its being a piracy of a work of the plaintiff's, called "*The Post Office Official Monthly Director*;" and an order was made directing the motion to stand over, with liberty to the plaintiff to bring an action within three weeks.

Wigram now appeared for the defendants, Messrs. Longman, and submitted to the injunction; *Hoare* for defendant, Letts; *W. M. James*, for plaintiff.

The Vice-Chancellor said, the injunction must of course be made perpetual, but as the plaintiff had not, previously to the motion for the injunction, given the defendants an opportunity, by any remonstrance or application, of instituting inquiries, or of abstaining from any further sale, he was only entitled to his costs from the time of the service of the notice.

July 23.—*Murray v. Ingram*—Leave to serve notice of motion for special injunction to restrain infringement of copyright.

July 23.—*Nedham v. Carpenter*—Order on claim for fund belonging to married woman to be carried over to separate account.

— 23.—*Marquis of Salisbury v. Great Northern Railway Company*—Stand over.

— 24.—*Schofield v. Cahnac*—Judgment on construction of will and codicil.

— 24.—*Fletcher v. Lancashire and Yorkshire Railway Company*—Injunction granted to restrain defendants taking lands.

— 25.—*In re Dickinson*—Stand over.

— 25.—*Murray v. Ingram*—Motion for injunction stand over by arrangement upon undertaking.

— 26.—*In re Hemp and Flax Company*—Order on petition for discharge of winding-up order.

— 26.—*In re Aglesbury Free School*—Order on petition reducing the district within which the trustees were to reside.

— 26.—*Beckford v. Jasper*—Reference as to title to fund in Court.

— 28.—*Corporation of Rochester v. Lee*—Decree establishing plaintiffs' right to and for an account of coal dues.

Vice-Chancellor Lord Granworth.

In re Great North of England and Yorkshire and Glasgow Union Junction Railway Company, ex parte England. June 24, 1851.

WINDING-UP ACT.—PROVISIONAL COMMITTEE-MAN.—CONTRIBUTORY.—LEGAL LIABILITY.

Upon appeal from and reversing the decision of the Master inserting the name of a member of the executive committee on the list of contributories under the 11 & 12 Vict. c. 45, held, that the mere circumstance of his consenting to be placed on the provisional and executive committee, and being present when the latter committee was nominated and a resolution passed for allotting shares, did not render him liable to contribute in the absence of evidence that he had accepted shares or become legally liable in appointing paid officers or in directing any expenses.

THIS was an appeal from the decision of the Master, to whom the matter of the winding-up of the above company had been referred, including the name of the appellant, Thomas England, on the list of contributories. It appeared that upon the formation of the company in 1845, a provisional committee was appointed, and that the appellant had attended one of their meetings at which the executive committee was appointed and a resolution passed that 100 shares should be offered to all the members of the provisional committee, and 150 to those of the executive committee. Mr. England, who was one of the executive committee, directed the secretary to let him have 100 shares, but no formal allotment or acceptance of the shares took place, nor did he attend any other meetings of the committee.

Bethell and *Baggallay* in support of the motion; *Rosburgh* for the official manager,

contra, referred to *Uppill's* case, 2 House of Lords' Ca. 674.

The Vice-Chancellor said, that no one was a contributory unless he had incurred some legal liability, and as there was no evidence that the appellant had accepted shares or become legally liable in appointing the officers who were to be paid, or in directing any other expenses, the present was distinguishable from *Uppill's* case, and the appeal must be allowed.

July 23.—*Harcourt v. Seymour*—Decree for plaintiffs, and conveyance of estates to trustees set aside.

— 23.—*Seymour v. Vernon*—Decree by arrangement.

— 25.—*Geib v. Dibley*—Order for stay of proceedings in creditor's suit.

— 25.—*Harford v. Rees*—Motion refused for payment of money into Court.

— 29.—*Giffin v. Muges*—Claims dismissed on behalf of residuary legatees for administration of estate.

— 29.—*In re Cooke*—Order for payment of fund of 227*l.* out of Court to husband on petition of husband and wife, who was a ward of Court.

— 29.—*Scott v. Deffell*—Judgment on further directions in administration suit instituted by creditor.

— 29.—*Nassau v. Rocks*—On petition for appointment of new trustees, a vesting order under the 13 & 14 Vict. c. 60, was held to vest the estate in the new trustees, where one of the old trustees was out of the jurisdiction, and the other was to continue a trustee.

Vice-Chancellor Turner.

Dalglish and another v. Jarvie. June 14, 17, 1851.

COPYRIGHT OF DESIGNS' ACT.—BILL FOR INJUNCTION.—EXPIRATION OF PERIOD OF PROTECTION.—COSTS.—PREVIOUS PUBLICATION.

In a suit for an injunction to restrain the infringement of the plaintiff's copyright in a design for calico printing, which had been registered under 5 & 6 Vict. c. 100, and 6 & 7 Vict. c. 68, an *ex parte* injunction had been dissolved by the late Vice-Chancellor of England, on the ground of the suppression of the fact, that the design had, in accordance with the custom of the trade, been shown to customers two months before such registration, for the purpose of obtaining orders, and the decision was affirmed by the Lords' Commissioners on appeal, and the period of nine calendar months for which protection had been granted having previously expired: Held, that the plaintiff should not have gone into evidence after such decision and the expiration of the time of the copyright, and the bill which had been amended by introducing such exhibition, was dismissed without costs up to the time the cause was before the Lords' Commissioners, and with the costs subsequently incurred.

Quære, whether such exhibition of the design to the trade, for the purpose of obtaining orders, amounted to a previous publication, within the 5 & 6 Vict. c. 100, s. 3.

THIS bill was filed for an injunction to restrain the defendant from selling or exposing for sale a design, applicable to muslin, calico, and other woven fabrics, which had been registered on Dec. 9, 1848, under the provisions of the 5 & 6 Vict. c. 100, and 6 & 7 Vict. c. 68, but it appeared from the answer that, in accordance with the custom of the trade, the designs had, before they were printed, been shown to customers for the purpose of obtaining orders, for the space of two months before they were registered under the 5 & 6 Vict. c. 100. An *ex parte* injunction which had been granted was discharged by the late Vice-Chancellor of England with costs, on April 17, 1850, upon the ground of this suppression of the facts in the bill, and this decision was affirmed by the Lords' Commissioners on June 25, 1850, (reported 2 M'N. & G. 231). The period of nine months, for which the copyright extended, under the 5 & 6 Vict. c. 100 had expired, but the parties had gone into evidence, and the question for the decision of the Court was, by whom the costs of the suit should be borne.

Robt and Daniell, for the plaintiffs, referred to sec. 3 of the 5 & 6 Vict. c. 100, which enacts, that "with regard to any new and original design" "whether such design be applicable to the ornamenting of any article of manufacture, or of any substance," "and that whether such design be so applicable for the pattern," "and by whatever means such design may be so applicable, whether by printing," "the proprietor of every such design, not previously published either within the united kingdom of Great Britain and Ireland or elsewhere, shall have the sole right to apply the same to any articles of manufacture, or to any such substances as aforesaid; provided the same be done within the united kingdom of Great Britain and Ireland," for the term of nine calendar months, "in respect of the application of any such design to ornamenting" "any woven fabrics, composed of linen, cotton, wool, silk or hair," "if the design be applied by printing;" and contended the publication disclosed in the answer, and which had been introduced into the bill by amendment, was not such a publication as would disentitle the plaintiff to the benefit of the act.

Bethell and Prendergast, for the defendants.

The Vice-Chancellor said, that as the time of the copyright had expired, the plaintiff should not have gone into evidence after the decision of the Lords' Commissioners, and the bill was dismissed without costs up to the time when the case was before the Lords' Commissioners, but with the costs which had been subsequently incurred.

July 24.—*Anderson v. Guichard*—Order for taxation and payment out of fund in Court of costs of claim, and for continuation of receiver who had been appointed upon motion.

July 25.—*In re Pleyer's Trust*—Order for appointment of new trustees and for conveyance of trust estate under the 13 & 14 Vict. c. 60.

— 25.—*Grenfell v. Wycombe Railway Company*—Injunction granted to restrain defendants from taking possession of land for purposes of their railway.

— 25.—*Abbot v. Calton*—Reference as to title in claim for specific performance of agreement.

— 23, 28.—*Bassil v. Lister*—Petition dismissed with costs.

— 28.—*Chadwick v. Madon and another*—Decree for specific performance of contract against defendant Madon, and refused as against defendant Lees.

— 26, 29.—*Wilkinson v. Fowkes*—Objection allowed to form of supplemental bill, with leave to amend.

— 26, 28, 29.—*Russell v. Jackson*—Cur. ad. vult.

Court of Queen's Bench.

Sims and others v. Marryat. June 3, 6, 1851.

COPYRIGHT. — WARRANTY OF TITLE. — EQUITABLE ASSIGNEE.

The plaintiffs applied to the son and executor of the plaintiff Marryat, for the purchase of the copyright in a work, and the defendant wrote that he would treat with them, and further, in answer to an offer made by them, to the effect that he accepted it, and then proceeded "I possess but few of the copyrights of Captain Marryat's earlier works, and many of them have already appeared in cheap publications. I will let you know in a few days what copyrights I do possess," and he subsequently received the sum offered, giving a receipt that it was "for permission to publish Captain Marryat's work, 'The adventures of Mons. Violet,' for such time as the copyright shall endure, such right to be exclusively their own for the period of 10 years." Held, to amount to a warranty of title in the defendant to sell, and that the fact that another person had a title which was enforceable in equity, was sufficient to breach the warranty, so to entitle the plaintiff to recover in an action thereon.

THIS action was brought by the plaintiffs, publishers of Belfast, to recover damages from the defendant, who was the son and executor of the late Captain Marryat, for the failure of the warranty of title in the defendant to sell the copyright in a work called "The Adventures of Monsieur Violet," for 10 years, for publication by them in the Parlor Library. It appeared that on the plaintiffs applying to the defendant for the copyright, he wrote to them on March 1, 1849, stating his willingness to treat with them, and they accordingly offered 50*l.*, and on March 22, the defendant then wrote as follow:—"You formerly made me an offer of 50*l.* for the exclusive right of publishing the Adventures of

M. Violet in the 'Parlour Library,' which offer I accepted, and wrote to you to that effect I possess but few of the copyrights of Captain Marryat's earlier works, and many of them have already appeared in cheap publications. I will let you know in a few days what copyrights I do possess. In the meantime, I shall be glad to know whether you received my letter," and on receiving the 50*l.* gave the following receipt:—"Received of Messrs. Sims 50*l.*, for permission to publish Captain Marryat's work, 'The Adventures of Mons. Violet,' for such time as the copyright shall endure, such right to be exclusively their own for the period of 10 years." It having been discovered that a sale of the copyright of the work in question had been made by Captain Marryat in his lifetime, together with others for 300*l.*, to Mr. Bentley, under an agreement, but which had never been entered, although the 300*l.* had been paid, and had not been registered under the 5 & 6 Vict. c. 45, at Stationers' Hall; the present action was brought and had been turned into a special case for the opinion of the Court, whether the letters amounted to an express warranty of title, or if not, whether they implied it, and whether Mr. Bentley had such a title in equity as would enable him to restrain the plaintiffs' continuing the publication.

Hugh Hill for the plaintiffs; *Channell, S. L.*, for the defendant.

The Court said, that the letters which, taken together with the receipt, constituted the agreement contained an express warranty of title, and there was no doubt that the defendant, acting in ignorance of what his father had done, had warranted the copyright. And as it appeared Mr. Bentley had an equitable title, which a Court of Equity could enforce, as in *Sweet v. Carter*, 11 Sim. 572, and this Court would take notice of such equity, the plaintiffs were therefore entitled to judgment on both points.

Court of Common Pleas.

Skelton v. Springate. June 17, 1851.

LIABILITY OF FATHER TO DEBT INCURRED BY SON UNDER AGE.—AUTHORITY TO PLEDGE HIS CREDIT.—EVIDENCE.

Held, making absolute a rule nisi to enter a nonsuit in an action brought in the Sheriff's Court to recover the amount of a debt incurred by the defendant's son, a minor, for lodging with the plaintiff, that, in the absence of evidence to show that the son had authority to pledge his father's credit, or that the father had undertaken to pay the plaintiff, such action was not maintainable.

THIS was a rule nisi granted on June 2 last, to set aside the verdict for the plaintiff and enter a nonsuit in this action which was brought by the plaintiff, a coffee-house keeper in the Minorities, to recover a debt incurred by the defendant's son for lodging at his house for 15 weeks. It appeared that the son was under age and had been sent up to town to get

employment in some ship by the defendant who gave him 5*l.* and directed him to go to a certain hotel until he obtained such employment, but that the son finding he could live at the plaintiff's house for a guinea a week, went there, and after staying for 15 weeks, enlisted as a soldier and went abroad without paying the plaintiff who thereupon sued the defendant in the Sheriff's Court and obtained a verdict for 15 guineas. It also appeared that while the son was staying at the plaintiff's, the latter wrote to the defendant whose attorney answered that he would call in reference to the debt.

Byles, S. L., and *Charnock* showed cause against the rule, which was supported by *Needham*.

The Court said, that as the son had no authority to pledge his father's credit, and there was no evidence showing that the defendant had undertaken to pay the debt incurred by his son with the plaintiff, the rule must be made absolute.

Court of Exchequer.

Yates v. Eastwood. June 24, 1851.

ACTION FOR MONEY HAD AND RECEIVED.—BY MORTGAGEE OF GOODS DISTRAINED FOR RENT FOR SURPLUS AGAINST LANDLORD.

Held, that an action for money had and received will not lie against a landlord on behalf of the mortgagee of goods distrained under the 2 Wm. & M. sess. 1, c. 5, to recover the surplus remaining in his hands after satisfying a distress for rent, and a rule was made absolute to enter a nonsuit in such an action.

THIS was a rule nisi to enter a verdict for the defendant or for a new trial in this action, which was brought to recover as money had and received to the plaintiff's use, a sum of 200*l.*, being the surplus remaining in the hands of the defendant, who was the owner of a cotton-mill, after satisfying a distress put in by him on the goods therein, of which it appeared the plaintiff was mortgagee, for arrears of rent due from the tenant, named Halliwell.

On the trial before Mr. Justice Cresswell, at the last York assizes, the plaintiff obtained a verdict subject to this rule.

Watson and *Hall* showed cause, and contended the plaintiff might waive his action of tort under the 2 Will. & M. sess. 1, c. 5, against the landlord, and proceed by an action for money had and received.

Pashley and *Hugh Hill*, in support, were not called on.

The Court said that the present action could not be maintained, as the landlord's duty, under the 2 Will. & M. sess. 1, c. 5, after satisfying his distress, was to leave the surplus with the sheriff for the defendant's use, and not to inquire who was the party entitled thereto, and the rule must be made absolute to enter a nonsuit.

Court of Eschequer Chamber.

South Eastern Railway Company v. Regiam.
May 14, June 18, 1851.

RAILWAY CLAUSES' CONSOLIDATION ACT.
—CROSSING ROAD AND CONSTRUCTION
OF BRIDGE.—MANDAMUS.

On error from the Court of Queen's Bench, a peremptory mandamus was quashed which did not leave to the company the option of either carrying the road, which they had crossed not on a level by means of a cutting, over the railway, "or" of carrying the railway over such road, in compliance with the provisions of the 8 & 9 Vict. c. 20, s. 46; and held, that the company had not determined such option by crossing the road by means of the cutting.

This was a writ of error from the decision of the Court of Queen's Bench issuing a peremptory mandamus on the company to carry their railway by means of a bridge, over a public highway in the parish of Plumstead, Kent, which they had destroyed. It appeared that the railway crossed the road, not on a level, by means of a trench or cutting 20 feet deep and 35 feet wide, through which the line was carried, and that the public high road was thereby cut through and destroyed and rendered impassable for carriages. Notice had been given to the company under the 8 & 9 Vict. c. 20, to cause the road to be carried

over the railway, and upon their neglecting to do so, this mandamus had been obtained commanding them to carry it over their railway with a breadth of 25 feet between the fences, and an ascent of one foot in twenty, as directed by s. 49.

Peacock for the plaintiffs in error, contended the mandamus should have been in the alternative on the company to carry the road either over or under their railway, referring to the 8 & 9 Vict. c. 20, s. 46, which enacts, that "if the line of the railway cross any turnpike road or public highway, then, (except where otherwise provided by the special act,) either such road shall be carried over the railway, or the railway shall be carried over such road, by means of a bridge of the height and width and with the ascent and descent by this or the special act in that behalf provided."

Needham, contra, on the ground that the company had exercised their option under the act, and it was impossible to make the railway over the highway.

Cur. ad. vult.

The Court, said, that as under the act of parliament the company had an option as to the mode of constructing their railway in respect of the road, and it was not shown that option had been determined inasmuch as the company might still carry their line over the highway if they thought it more convenient, the mandamus was bad and must be quashed.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

JOINT-STOCK COMPANIES' WINDING-UP ACT.

[Concluded from page 208, ante.]

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lanacy, p. 147.

Courts of Equity :

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, pp. 204, 246.]

OFFICIAL MANAGER.

Different counsel appearing.—Authority of Manager.—Two official managers of a company were appointed under the Winding-up Act, 1848. Upon a motion in Court by way of appeal from an order of the Master, counsel appeared on behalf of both official managers; and other counsel also appeared upon different instructions for one of them. The Court stopped the cause until it had ascertained which counsel was instructed

by the actual authority of that official manager; and, upon his personally appearing in Court, and stating which counsel he had individually authorized, the Court heard that counsel only on his behalf. *In re London and Manchester Direct Independent Railway Company, Bass's case*, 1 De G. & S. 722.

LOAN SOCIETY.

A loan society held to be within the Winding-up Act, 1849. *In re Sherwood Loan Company, ex parte Smith*. 1 Sim. N. S. 165.

PETITION.

Discharge of order.—Omission of material circumstances.—The Court made an order, directing the winding-up of a joint-stock company under the Winding-up Act, 1848, upon a petition sufficient in point of form, but omitting material circumstances within the petitioner's knowledge, which ought to have been brought to the notice of the Court. This objection was taken at the first meeting before the Master. Upon a petition presented promptly afterwards, the Court discharged the order for winding up, with costs against the petitioner who had obtained the winding-up order.

The Court refused to sustain the former

order at the request of an independent contributory; but discharged it without prejudice to any application that might be made to wind up the company. *Ex parte Barnett, in re Ipswich, Norwich, and Yarmouth Railway Company*, 1 De G. & S. 744.

PRIOR DEBTS.

Liability in respect of debts incurred before becoming member.—The 7 Geo. 4, c. 46, s. 13, directing executions on judgments against banking companies to issue against actual members in priority to members at the time of the contract, does not of itself, and independently of express stipulation, render a member liable to be placed on the list of "contributories," in respect of liabilities incurred before he became a member. *In re North of England Joint-stock Banking Company, Sanderson's case*, 3 De G. & S. 66.

PROSPECTUS.

Mis-statements.—Company not formed.—It is not sufficient ground for excluding an allottee from the list of contributories to a provisionally-registered railway company, that the prospectus of the company contained incorrect and fraudulent statements, in reliance on which he applied for shares, or that the project was never carried into effect, unless it appear that the only other persons interested in the company were the persons who made the fraudulent statements. *In re Direct London and Exeter Railway Company, Parbury's case*, 3 De G. & S. 43.

PROVISIONAL COMMITTEE.

1. **Liability.**—An association was formed for the purpose of making a railway, and was provisionally registered. A. allowed his name to be inserted in the list of the provisional committee, but afterward directed it to be withdrawn, and he declined to take any shares. The provisional committee appointed a managing committee, and certain expenses were incurred, and the scheme was ultimately abandoned. A., then, for the first time, attended some meetings of the provisional committee, and signed an agreement, together with other members of the provisional committee, to bear equally any payments which any of them might be subjected to on account of the expenses and liabilities of the company. A. paid several sums of money on account of his contribution: *Held*, that the association was sufficiently formed to be a company within the meaning of the Winding-up Act, and that the name of A. was properly inserted in the list of contributories. *In re The Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Besley*, 2 H. & T. 375; 2 M.N. & G. 176.

2. F.'s name was, with his consent, placed on a provisional committee, and inserted in the usual advertisements. He never acted as a member of the committee, nor did any act except authorising his name to be put on the list: *Held*, that he was not liable as a contributory. *In re The Wolverhampton, Chester, and Birkenhead Junction Railway Company,*

ex parte Cottle, 2 H. & T. 382; 2 M.N. & G. 185.

Cases cited in the judgment: *Reynold v. Lewis*; *Wylde v. Hopkins*, 16 M. & W. 517.

3. A. consented that his name should be placed on a provisional committee of a railway company, subject to his approval of the plans and course of the line, and so that he should be held free from all liabilities. His name was put on the list, and he attended two meetings of the provisional committee, at the latter of which a managing committee was appointed; but A. left the meeting before the resolution was passed. His name was afterwards withdrawn at his request: *Held*, that, under the circumstances, and independently of the stipulation in his original covenant, he was not liable as a contributory; and that the fact of his having contributed 65*l.* under protest, when threatened with actions by creditors of the company, did not vary the case. *In re The Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Roberts*, 2 H. & T. 391; 2 M.N. & G. 192.

4. Where members of the provisional committee of a projected railway company have with others incurred liabilities with reference to the intended company, they are entitled to have the affairs of the company wound up, although such liabilities may not affect the general body of subscribers. *Ex parte Holmworth, in re Great Western, Southern, and Eastern Counties, or Ipswich and Southampton Railway Company*, 3 De G. & S. 7.

5. To whom no share has been allotted.—A member of the managing committee of a provisionally-registered railway company, who had declined to take any shares, and to whom no shares had been allotted, had paid 30*0*l.** to the solicitor employed on behalf of the company, for costs: *Held*, that he was entitled to have the company wound up. *Ex parte Cooke, in re Eastern Counties Junction and Southend Railway Company*, 3 De G. & S. 148.

RE-HEARING.

1. **Amendment Act.**—Notice.—The 33rd section of the Joint-Stock Companies' Winding-up Amendment Act, 1849, is retrospective; and where notice of a motion of rehearing of an order made before the passing of that act, had not been served within the time limited by the 33rd section, the Court refused to hear the application. *In re The North of England Joint-stock Banking Company, ex parte Sanderson*, 1 H. & T. 486; 1 M.N. & G. 306.

2. **After time limited for appeal.**—The 33rd clause of the Amendment Act of 1849, is retrospective, and in effect, though not in terms, prevents a re-hearing before a Vice-Chancellor as well as before the Lord Chancellor, after three weeks, although the three weeks had expired before the act came into operation. *In re North of England Joint-stock Banking Company, Sanderson's case*, 3 De G. & S. 66.

RETIRED SHAREHOLDER.

1. The directors of an unincorporated joint-

stock company called an extraordinary general meeting, by a notice stating its purpose to be to receive from the directors a proposition for paying off advances made to the company, and discharging such other liabilities as required to be paid at an early period, without appropriating to that purpose the funds accruing from the present trade. At the meeting resolutions were passed for raising sums by loan notes; and one of the resolutions provided, that if any shareholder should be desirous of raising, the directors should be at liberty to purchase his shares at a price not exceeding 15*l.* per share, on his investing an amount not less than the purchase-money for his shares, and taking the loan note of the company, payable in five years, with interest for both the price of the shares and the loan. Copies of these resolutions were forwarded to all the shareholders, and some of them transferred their shares upon the terms proposed, making the stipulated advances, and taking loan notes. The powers of the directors under the deed of settlement did not enable them to enter into this arrangement: *Held*, that such a transfer made by a shareholder in 1844, and remaining unquestioned till 1849, when the company was wound up under the Winding-up Act, 1844, was not, on the ground of acquiescence on the part of the company or otherwise, sufficient to restrict his liability as a contributory to the period when he parted with his shares, whatever might be the equities between him and individual shareholders. *In re Vale of Neath and South Wales Brewery Company, Morgan's case*, 1 De G. & S. 750.

2. At an extraordinary meeting of an unincorporated joint-stock company, resolutions were passed, purporting to empower the directors, on behalf of the company, to buy up the shares of any shareholder wishing to retire, on the terms of the purchase-money being paid in debentures, and of a further advance of the same amount being also made by the vendor, on the same security.

On a purchase being effected on these terms by a director, from a shareholder who was not aware that the director was not purchasing on his own account: *Held*, that the shareholder was not affected with constructive notice to the contrary; and, on his deposing that he had no actual notice, and there being no conflicting testimony, the Court directed the Master to review the list in which the shareholder was included as a "contributory" without qualification. *In re Vale of Neath and South Wales Brewery Company, Hollway's case*, 1 De G. & S. 777.

SALARY.

Agreement.—*Secretary.*—A, who had been appointed secretary to a joint-stock company at a yearly salary to commence on the 25th of March, 1845, signed an agreement that no director or shareholder of the company should be personally responsible for the salaries of any of the officers; and that no officer should be paid for his services, until a sufficient sum

should be obtained by the funds of the company for that purpose. An order for winding up the company was made on the 23rd of Feb., 1850: *Held*, that the agreement did not exonerate the shareholders from liability to contribute, as members of the company, to the payment of arrears of salary due to the secretary; and that, though he was not, in strictness, entitled to more than a portion of his salary for the second year, yet, as he had served for nearly the whole of that year, it was but reasonable to allow him his salary for the whole of it. *In re Independent Assurance Company, Cope's case*, 1 Sim., N. S., 51.

SCRIP-HOLDER.

A scrip-holder in a provisionally registered railway company, who has not signed the subscription contract, may present a petition to wind up the company. *Ex parte Capper, in re London, Bristol, and South Wales Direct Railway Company*, 3 De G. & S. 1.

Case cited: *Ex parte Pascock*, 1 De G. & S. 731.

SERVICE OF PETITION.

1. In cases in which the Joint-Stock Companies' Winding-up Act (1848) requires service of the petition for winding up a company upon an officer or member, there must, in general, be actual service; and an appearance by counsel to consent, at the hearing, is not sufficient. *In re Tring, Reading, and Basingstoke Railway Company*, 3 De G. & S. 10.

2. Service of petition for winding up company on its solicitor, not sufficient within the 10th section of act. *Ex parte Dale, in re Trent Valley and Chester and Holyhead Continuation Railway Company*, 3 De G. & S. 11.

3. Formal service of a petition for winding up a company upon a secretary, *held*, not requisite, where the secretary was present when the presentation of the petition was agreed to, and appeared by counsel to consent to it at the hearing. *Ex parte Wolsey, in re Great Western Railway Company of Bengal*, 3 De G. & S. 101.

4. To discharge order.—A petition to discharge a winding-up order must be served on the interim manager, if one has been appointed. *Ex parte Coleman, in re Cambrian Junction Railway Company*, 3 De G. & S. 139.

Case cited: *Ex parte Barrett*, 1 De G. & S. 744.

5. *Affidavit.*—Where service on a member is sufficient, the affidavit of service need only state that the person served is a member. *Ex parte Cooke, in re Eastern Counties Junction and Southend Railway Company*, 3 De G. & S. 148.

SHAREHOLDER.

See *Abertoe Company: Contributory: Retired Shareholder.*

SOLICITOR AND AGENT.

Order to pay balance.—The directors of a provisionally registered railway company paid to solicitors employed by the company a sum of money in respect of their bill of costs, which was not then delivered, and which, when de-

livered, fell short of the sum paid. The balance was claimed by the assignees of another solicitor, who had acted jointly with the former, in respect of certain extra costs not included in the bill; and the first-mentioned solicitors also claimed a lien in respect of subsequent costs: *Held*, irrespectively of these claims, that the balance was not in the hands of the solicitors as "agents or trustees" for the company, so as to give jurisdiction to the Master, under the 66th section of the Winding-up Act of 1848, to direct it to be paid to the official manager. *In re Direct London and Exeter Railway Company, Hollingsworth's case*, 3 De G. & S. 102.

SUBSTITUTED SERVICE.

Jurisdiction.—The Master has jurisdiction to order substituted service of an order upon a contributory for payment of a call. Form of such an order. *In re Kollman's Railway Locomotive and Carriage Improvement Company, Ellis's case*, 3 De G. & S. 172.

TRANSFER OF SHARES.

1. *Liability of transferor, when invalid*.—The deed of settlement of a joint-stock company required every transfer of shares to be registered, and the form of the transfer was adapted for execution both by transferor and by transferee. A shareholder sold his shares and executed a transfer, which, however, was never executed by the transferee, the purchase having been made by a father for his son, but the son declining to accept the shares. The transfer was duly registered, and the company addressed notices and circulars to the son at the residence of the father: *Held*, that the seller had not effectually transferred his shares so as to have got rid of his liability as a shareholder, and that he was properly placed upon the list of contributories, upon the affairs of the company being wound up under the Winding-up Act. *In re the St. George's Steam Packet Company, ex parte Hennessey*, 2 H. & T. 395; 2 M'N. & G. 201.

2. *Understanding not to be liable*.—The manager of a banking company, in which he held shares, induced a friend, D., living in the country, to subscribe the company's deed for 100 shares, upon the understanding, of which a minute was entered in the company's books, that all the shares that should not be transferred by him to other parties, should be transferred for him by the directors, and that he should receive nothing, nor incur any liability in respect of the shares. After disposing of 30 shares, the purchase-money for which was paid to the directors, D., in pursuance of the arrangement, transferred the remainder back to the manager by assigning it to him and his successors in office. He never received or paid anything in respect of the shares, and, eight years after the last transaction, the affairs of the company were wound up under the Joint-Stock Companies' Winding-up Act, 1849: *Held*, that the effect of the transaction was to hold out D. as a partner, to induce

others to become members of the company, and that he was properly placed on the list as a contributory. *In re St. Marylebone Banking Company, Davidson's case*, 3 De G. & S. 21.

3. *Non-compliance with deed of settlement*.—The owner of several shares in a steam-packet company, transferred two of them to his son, by a document which was not executed by the son, nor entered in the company's books, nor otherwise perfected according to the provisions of the deed of constitution. The son was not aware of the transfer. By a rule of the company, every proprietor was always entitled to a free passage by the company's vessels, and the son, on several occasions, obtained certificates from the company's office that he was a proprietor, which entitled him to a free passage; and he also signed each certificate, and the company's books, in respect of these certificates, as proprietor, and obtained a free passage accordingly; but he never received dividends, nor did any other act as a proprietor: *Held*, that the son was a contributory in respect of such two shares. *In re St. George's Steam Packet Company, Maguire's case*, 3 De G. & S. 31.

4. *Irregularity*.—One hundred shares were sold in one parcel by a broker, for two vendors, of 50 shares each, in a joint-stock company. Five of the shares were transferred by deed by one of the vendors to the purchaser, and the purchase-money of the 100 shares was paid to the broker. The purchaser was accepted by the directors as the proprietor of the 100 shares, and his name was entered accordingly on the company's books: *Held*, that the 100 shares formed the subject of one contract, and that the whole must be governed by the terms of the deed of transfer of the five shares. *In re North of England Joint-Stock Banking Company, Dodgson's case*, 3 De G. & S. 85.

See Contributory, 10, 21; *Infant*.

TRUSTEE.

Adoption of transfer.—A widow who, as the executrix and residuary legatee of her late husband, was entitled to shares in a banking company, assigned them by deed to a trustee, previously to her marrying again. The trustee did not fulfil the requisitions of the deed of settlement, with reference to an assignee of shares becoming a shareholder, but he received the dividends, sometimes signing the receipts "for the executors" of the testator, sometimes "for the trustees of" [the widow by her widow's name.] There was an entry of the assignment in the books of the company, but it did not appear by whom notice of it had been given: *Held*, that the trustee's name was properly placed on the list, but that his liability should be restricted to the time of the assignment; but, on appeal, the Lord Chancellor thought that the evidence was insufficient to fix the trustee with liability, and ordered the motion to stand over till the official manager had established his case in a Court of law. *In re North of England Joint-Stock Banking Company, Hall's case*, 3 De G. & S. 80.

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BAR ETIQUETTE AND ADVOCACY BY ATTORNEYS.

ENCOURAGED by what is reported to have fallen from the Attorney-General and Mr. Cardwell, in the debate on the County Court Extension Bill, with respect to the expediency of reviewing what is called the etiquette of the Bar, a small section of the junior part of that branch of the profession are impatiently anxious to break down the barrier that has hitherto divided the barrister and the attorney, without much regard to the permanent injury which such a proceeding must inevitably inflict on the legal profession and on the public.

The actual and rapid diminution of Common Law business is, no doubt, the operative motive for requiring a change in the relations which have so long existed between the Bar and the more numerous branch of the profession; but a portion of the Bar complain, as it appears to us, without any adequate cause, that their peculiar province of advocacy has been of late intrenched upon by "Attorney-Advocates." Those who conceive that the depression to which the Junior Bar, in common with every other class of the legal profession, is at present subject, is to be ascribed in any considerable degree to the practice of advocacy by attorneys, have found an exponent of their sentiments in a pamphlet very recently published by Mr. James Stephen, (a barrister,) entitled "Bar Etiquette, in reference to the Rule requiring the intermediary agency of an Attorney between Counsel and Client," to which we deem it expedient shortly to direct public attention.

It is certainly not desirable that, at a crisis like the present, any ground for disunion should exist between the various ranks of the profession. We therefore propose calmly to consider to what extent

the alleged grievance put forward on behalf of the Junior Bar exists, and how far it can be justly complained of? A misapprehension prevails in some quarters as to facts, and this misapprehension it is in the first place material to remove. It is a mistake to suppose that any considerable number of attorneys, or any individual authorised to represent their opinions, ever entertained the most remote idea of creating amongst the attorneys a distinct class to act as advocates.

We are aware that this *fantastic* notion (we considerably avoid any more appropriate adjective) was broached in a certain publication called the "County Courts' Chronicle," but the editor of that work, we believe, is a barrister, and his suggestion, whatever be its merits, met neither encouragement nor support from the attorneys.¹ It is also assumed to be a *notorious* fact, that in many parts of the country combinations have been entered into by the attorneys to exclude the Bar from any participation in the County Court practice,² and we are aware that the Attorney-General in his place in the House of Commons, not only made a statement to this effect, but added to it, that he was informed of an instance where seven attorneys having got possession of the County Court practice in a particular district, met together and resolved that they would never appear in Court without a fee of three guineas paid beforehand.

The districts in which the alleged "combinations" have been entered into, and the local habitation of the seven wise attorneys who are said to have fixed a fee upon their services, which would have effectually pre-

¹ County Courts' Chronicle for April, 1850, p. 97.

² Bar Etiquette, p. 27.

be optional instead of compulsory on the client; as on consulting the barrister he would be informed of the fee expected for the whole business, and would then proceed with the affair, or retire, as he chose.

COUNTY COURTS' FURTHER EXTENSION BILL.

THE general results of the Session of Parliament which has just closed, will be more conveniently considered in a future number.

We now propose to put our readers in possession of the substance of the new clauses, added by the Committee of the House of Commons on re-commitment and on *second* re-commitment, to the bill "further to extend the Jurisdiction of the County Courts, and to facilitate proceedings in the High Court of Chancery." The more prudent course as already suggested, would have been to suspend all legislation, with a view to the increase of County Court Jurisdiction, until the reports of the separate Commissioners engaged in the inquiry into the procedure of the Courts of Law and Equity could be considered, and the Legislature had an opportunity of determining upon what footing, *if at all*, the Superior Courts of Law and Equity should continue to stand. Such a course, however, was totally opposed to the feelings and intentions of those who conceive that the administration of justice is only to be improved through the instrumentality of the County Courts.

In the print of the bill now before us, it is authoritatively announced that clauses marked A to H were added by the Committee, clause I on re-commitment, and the clauses K to R on *second* re-commitment, so that in a bill containing in the whole only 23 clauses, 15 have been added after the second reading in the Commons, and the bill thus materially changed, and in substance a new bill is printed and circulated amongst the profession, and sent up to the House of Lords on the 6th August, only two days before the termination of the Session of Parliament. That legislation conducted in such breathless haste, and with such imperfect opportunity for deliberation or even examination, can be safe or satisfactory, no one can suppose. The miracle is, that an act concocted after such a fashion is not more objectionable, and that it promises to effect any of the objects its framers have in view.

The clause which was so fiercely dis-

cussed in the House of Commons, upon the proposal of the Attorney-General to give exclusive audience to the Bar in cases above 20*l.*, appears to have been ultimately shaped in the manner we understood, giving no right of exclusive audience to either barrister or attorney, but permitting the former as well as the latter to be instructed "by or on behalf of the party,"—a permission introduced against the sense of the Law Lords, and with the avowed object of giving the bar an opportunity of reviewing the rule which has hitherto precluded them from holding briefs taken directly from the parties and without the intermediary agency of an attorney. The clause as passed by the House of Commons is in these terms:—

"Whereas by the act 9 & 10 Vict., it was enacted, that no person should be entitled to appear for any other party to any proceeding in any of the said Courts, 'unless he be an attorney of one of her Majesty's Superior Courts of Record, or a barrister-at-law instructed by such attorney on behalf of the party, or, by leave of the judge, any other person allowed by the judge to appear instead of such party, but that no barrister, attorney, or other person, except by leave of the judge, should be entitled to be heard to argue any question as counsel for any other person in any proceeding in any Court holden under that act:' Be it enacted, That the said last-recited enactment be repealed, and that it shall be lawful for the party to the suit, or for an attorney of one of her Majesty's Superior Courts of Record retained by or on behalf of the party, or for a barrister retained by or on behalf of the party, on either side, or, by leave of the judge, for any other person allowed by the judge to appear instead of the party, to address the Court, without any right of exclusive or free audience, but subject to such regulations as the judge may from time to time prescribe for the orderly transaction of the business of the Court."

The following clauses which were proposed by Mr. Mullings, (as already stated) upon the suggestion of the Incorporated Law Society, were adopted by the House of Commons, and are printed in the latest edition of the bill.—

"That subject to such general orders as may be made on that behalf by the Lord Chancellor, with such advice and consent as aforesaid, all pleas, answers, disclaimers, examinations in answer to interrogatories allowed by a Master in Ordinary, affidavits, declarations, affirmations, and attestations of honour in causes or matters depending in the High Court of Chancery, and also acknowledgments required for the purpose of enrolling any deed in the said Court, shall and may be sworn and taken in Scotland or Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her

Majesty in foreign parts, before any judge, Court, notary public, or person lawfully authorized to administer oaths in such country, colony, island, plantation, or place respectively, or before any of her Majesty's Consuls or Vice-Consuls in any foreign parts out of her Majesty's dominions, and the judges, masters, and other officers of the said Court of Chancery, or acting as such under the authority of this act, shall take judicial notice of the seal or signature, as the case may be, of any such Court, judge, notary public, person, Consuls, or Vice-Consuls, attached, appended, or subscribed to any such pleas, answers, disclaimers, examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or other documents to be used in the said Court.

"That the 13th sect. of the 13 & 14 Vict. c. 61, be repealed, and that in any action in which the plaintiff shall not be entitled to recover his costs by reason of the provisions of the 11th sect. of the said last-mentioned act, whether there be a verdict in such action or not, if the plaintiff shall make it appear to the satisfaction of the Court in which such action was brought, or to the satisfaction of a judge at chambers, upon summons, that such action was brought for a cause in which concurrent jurisdiction is given to the Superior Courts, by the 128th sect. of the act 9 & 10 Vict. c. 95, or for which no plaint could have been entered in any such County Courts, or that such action was removed from a County Court by certiorari, or that there was sufficient reason for bringing such action in the Court in which such action was brought, then and in any of such cases the Court in which such action is brought, or the said judge at chambers, shall thereupon, by rule or order, direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have the same judgment to recover his costs that he would have had if the before-mentioned act, passed in the session held in the 13th & 14th years of the reign of her present Majesty, c. 61, had not been passed."

The practical utility of both these clauses is manifest, but we confess ourselves to be at a loss to perceive any necessity for the introduction of the following clause, which is in direct opposition to the express recommendations of the Common Law Commissioners, "that all statutory enactments allowing parties to plead the general issue or other general plea, and to give special matter in evidence under such general plea, be repealed."¹

The last clause of the bill before us, that which will be considered by many as the most important, and which furnishes a key to the anxiety manifested in some quarters, to obtain increased jurisdiction for the County Court Judges, is in these words:—

"Whereas it is provided by the act 9 & 10 Vict. c. 95, s. 40, that the greatest salary to be received in any case by the judges and clerks of the County Courts, shall be 1,200*l.* for a judge, and 600*l.* by a clerk, Be it enacted, that from and after the passing of this act, the greatest salaries to be received in any case by the said judges and clerks respectively, shall be 1,500*l.* by a judge and 700*l.* by a clerk."

Under this provision, it will be observed, that any number of the County Court Judges may continue to receive the salary of 1,000*l.* per annum, now bestowed on those functionaries, or may have an increase of one-half more, or 500*l.* per annum, at the will of those entrusted with this delicate discretion. Our silly ancestors were so infatuated as to suppose, that the independence of those holding judicial office was necessary, in order to secure the maintenance of public freedom, as well as the due administration of justice between man and man. In our more enlightened days such considerations are overlooked, and if the Executive Government do not find in the County Court Judges pliant tools, it certainly is not the fault of those who have framed and passed this law!

NEW RULES AND ORDERS OF THE COUNTY COURTS.

1. The rules of practice and the forms made in pursuance of sect. 78, of 9 & 10 Vict. c. 95, shall, from and after the rules and forms hereinafter set forth come into operation, cease to be used in the said last-mentioned Courts, and in lieu thereof the following shall be the rules of practice and forms adopted and used in the County Courts in England.

2. *Sittings of the Court.*—On or before the 1st day of January, 1852, the judges shall appoint the days and hours for holding each of their Courts during the months of January, February, and March, in the said year, and on or before the 1st day of every month after the said month of January, the judges shall appoint the days and hours for holding each of their Courts during the month next following the three months previously appointed; and a notice of such appointments shall forthwith be put up by the Clerk in some conspicuous place in the Court-house and in the office of the Clerk; and whenever any day so appointed for holding the Court shall be altered, notice of such alteration and the time when it will take effect, shall be put up in some conspicuous place in the Court-house and Clerk's office: Provided, that the judge may from time to time hold additional Courts besides those hereinbefore required to be appointed.

3. Two Courts shall not be held before the same judge on one day.

4. *Interpretation.*—In these rules the words

¹ See First Report of Common Law Commissioners, page 24.

"Home Court" shall be understood to mean the Court from which process originally issued: and the words "Foreign Court" shall be understood to mean the Court of the district into which process is issued from another Court: and the words "Home District" shall be understood to mean the district of the Home Court: and the words "Foreign District" shall be understood to mean the district of the Foreign Court: and the word "District," shall be understood to mean the locality over which a Court has jurisdiction: and the words "on oath" shall be understood to mean "on oath *videlicet* voce or by affidavit," and unless there be something in the context inconsistent therewith, the provisions of s. 142 of the 9 & 10 Vict. c. 95, shall apply to the interpretation of these rules.

5. *Infant*.—9 & 10 Vict. c. 95, s. 64.—Where an infant applies to enter a plaint for any cause of action (other than for wages or piece-work, or for work as a servant) he must procure the attendance of a next friend, at the office of the clerk at the time of entering the plaint, and no plaint shall be entered until the next friend has undertaken, in the form in the schedule, to be responsible for costs, and on entering into such undertaking, he shall be liable in the same manner and to the same extent as if he were a party in an ordinary suit, and the cause shall proceed in the name of the infant by such next friend, and such undertaking shall be filed by the clerk, and no order of the Court shall be necessary for the appointment of such next friend. If the plaintiff fail in, or discontinue, his suit, and shall not pay the amount of costs awarded by the Court to be paid by him to the defendant, such proceedings may be taken for the recovery of such amount from the next friend as for the recovery of any debt or damage ordered to be paid by the same Court.

6. *Clerks' Duties*.—The clerk of every Court shall keep an office at each place where the Court of which he is clerk is held, and such office shall be kept open every day from 10 o'clock in the morning until 4 o'clock in the afternoon, except Sundays, Christmas-day, Good Friday, or any day appointed by royal proclamation for a public fast or thanksgiving.

7. 9 & 10 Vict. c. 95, s. 27.—The clerk of every Court shall keep the books, in the Schedule mentioned in the forms there given, and every entry in such books shall have a number prefixed corresponding with the number of the plaint to which the entry relates.

8. 9 & 10 Vict. c. 95, s. 26.—Whenever the clerk, or his lawful deputy is absent from the Court, the judge shall appoint a deputy to act on behalf of the clerk, and an entry of such appointment and the cause of such absence (if known) shall be made on the minutes of the Court.

9. 9 & 10 Vict. c. 95, s. 26.—Whenever a clerk appoints a deputy, the reason of such appointment shall be entered on the minutes of each Court for which such deputy acts.

10. 9 & 10 Vict. c. 95, s. 27.—All duties required to be performed by the clerk, except that

of acting in Court as clerk or signing the minute book, may be performed by the clerk, or by the assistant clerk or clerks provided by him.

11. 9 & 10 Vict. c. 95, s. 82.—The money to which suitors are entitled, shall be paid out upon demand, (in cash if required,) at any time when the clerk's office is open.

12. 9 & 10 Vict. c. 95, s. 92.—Whenever money is paid into or deposited in Court, whether before or after judgment, an acknowledgment in writing of such payment or deposit shall be given by the clerk.

13. 9 & 10 Vict. c. 95, s. 92.—All the books of the Court, including the banker's book and cash book, shall at all times be open to the inspection of the treasurer.

14. The clerk shall, whenever required by the treasurer, make out an account of the receipts and disbursements of the Court, and of cash still in hand, and shall produce the same to the treasurer, and shall pay over the balance to the treasurer, and if such account be correct, the treasurer shall certify that he has received such balance, and shall sign the account.

15. Rule 14 shall apply to receipts and disbursements in protection cases, under the acts 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96.

16. No clerk, deputy clerk, assistant clerk, bailiff, or other officer of the Court, shall sign the ledger, or any other book, or receive money on account of suitors, or otherwise act as an agent for that purpose.

17. No clerk, deputy clerk, assistant clerk, bailiff, or other officer of the Court, or any practising attorney, or clerk of such attorney, shall become surety in any case where, by the practice of the Court, security is required.

18. *Bailiff's duties*.—Whenever the high bailiff shall not attend any sitting of the Court, the cause of his absence shall be entered on the minutes of the next succeeding Court.

19. The high bailiff or a bailiff of the Court shall attend, for the purpose of receiving summonses, or for the performance of other duties, at the office of the clerk once every day.

20. Eight days before the day of holding any Court, the high bailiff of that Court shall deliver to the clerk a return of all summonses on plaints before judgment, issued to him ten days before the holding of such Court, returnable at such Court, and such return shall state the mode of service of each summons, and the high bailiff shall, at the same time, deliver to the clerk the copy of every such summons, indorsed as required by rule 52.

21. The high bailiff shall enter in a book to be kept by him for that purpose the particulars of all orders for the payment of money or costs, or both, which he shall have received, and of the mode in which he shall have served the same; and once in every calendar month at least, he shall lay the same before the judge of the Court, who shall sign the same and attest its having been duly laid before him.

22. Once in every calendar month, or oftener if the judge shall so order, the high bailiff shall deliver a return to the clerk, of the

Court pursuant to the form in the schedule, of what shall have been done since his last return under every process of execution or commitment which he has been required to execute, whether originally issued from such Court or from any other Court; and at the Court held next after the delivery of every such return, the clerk shall lay the same before the judge of the Court, who shall sign the same and attest its having been duly laid before him.

23. Every bailiff levying or receiving any money by virtue of any process issuing out of the Court of which he is bailiff, shall, within 24 hours from the receipt thereof, pay over the same to the clerk of such Court, and shall file and retain such process in his custody.

24. Whenever a warrant of execution required to be executed in a foreign district, cannot be executed in due time according to the exigency of these rules by the bailiff of the Foreign Court, he shall return such warrant to the clerk of the Home Court within 24 hours from the expiration of such time, and shall indorse on such warrant the reason why the same could not be executed, and he shall sign such indorsement.

25. *Plaint.*—9 & 10 Vict. c. 95, s. 59.—Every plaintiff shall, upon application at the office of the clerk, be entered in the form in the Schedule, and all particulars required by such form shall be entered by the clerk before issuing the summons: Provided, that if the plaintiff is unacquainted with the defendant's Christian name, the defendant may be described by his surname, or by his surname and the initial of his Christian name, or by such name as he is generally known by, and the defendant may be so described in the summons, and in the event of the plaintiff or defendants not appearing, the proceedings under Sects. 79 and 80 of the 9 & 10 Vict. c. 95, may be taken as if the true Christian name and surname had been stated in the summons, and all subsequent proceedings thereon may be taken in conformity with such description.

26. *Claims by husbands, in their own right,* may be joined with claims in respect of which the wife must be joined as a party.

27. *Particulars.*—On entering the plaint the plaintiff shall in all cases, if the sum sought to be recovered shall exceed forty shillings, deliver at the office of the clerk as many copies of a statement of the particulars of his demand or cause of action, as there are defendants, and an additional copy to be filed, and all such copies shall be sealed with the seal of the Court; and such particulars shall be taken to be and be treated as part of the summons.

28. 8 & 9 Will. 3, c. 11.—In actions for penalties to secure the performance of covenants, within the meaning of the 8 and 9 Will. III. c. 11, the plaintiff shall deliver particulars of the breaches on which he relies, in the same manner as required by the last rule, which when delivered shall be taken to be, and treated as, part of the summons, and if the

Court shall be of opinion that the plaintiff is entitled to recover, judgment shall be entered for the penalty, not exceeding the amount over which the Court has jurisdiction, and an entry shall be made on the minutes, of the damages awarded to the plaintiff, and execution may issue for the amount of such damages; and in case of subsequent breaches, the plaintiff may enter a plaint and sue out a summons in the nature of a *scire facias* on such judgment and shall deliver particulars of such subsequent breaches in the manner before mentioned, and which shall be taken to be and treated as part of such summons.

29. *Plaint Note.*—At the time of entering the plaint, the clerk of the Court shall give to the plaintiff or his agent, a note under the seal of the Court, according to the form in the Schedule; and no money shall be paid out of Court to the plaintiff or his agent, unless on production of such note, or by order of the judge.

30. *General Fund.*—9 & 10 Vict. c. 95, s. 52.—The general fund fee shall in no case be taken more than once in respect of the same demand in the same Court, except in the case of a fresh action after a nonsuit, and a proceeding in the nature of a *scire facias* shall, for the purposes of this rule, be deemed a proceeding in respect of the original demand.

31. On applications to recover possession of tenements, in pursuance of the 9 & 10 Vict. c. 95, s. 122, the general fund fee shall be calculated and taken on the yearly rent or value of the premises sought to be recovered.

32. *Mileage.*—The mileage in Foreign districts shall be determined according to the table of distances to these rules annexed, but must be calculated on a distance less by two miles than the distances there stated, and in Home districts the mileage may be ascertained by the clerk, by such means as he shall think proper, and his determination thereon shall be final: Provided always, that the Commissioners of her Majesty's Treasury may from time to time make such alterations in the said table as to them shall seem fit, and such alterations, when communicated to the clerks of the County Courts respectively, shall have the same force and effect, and shall be applicable in the same manner as the table of distances to these rules annexed.

33. *Postage.*—Postage necessary for the transmission of any process, order, notice, or other matter by the clerk or high bailiff shall be paid in the first instance by the party on whose behalf the proceeding required to be notified is taken, and shall be costs in the cause, and all letters sent by the parties or the officers of the Courts concerning the business of the Court shall be prepaid; but this rule, except as to the prepayment of letters, shall not apply to notices of payment into Court.

[To be continued.]

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

LANDLORD AND TENANT.—EMBLEMENTS AND FIXTURES.

14 & 15 VICT. C. 35.

On determination of leases or tenancies under tenant for life, &c., instead of emblements tenant to hold until expiration of current year, &c.; s. 1.

Growing crops seized and sold under execution to be liable for accruing rent; s. 2.

Tenant may remove buildings and fixtures erected by him on farms, unless landlord elect to take to them; s. 3.

Tenant quitting, leaving tithe rent-charge unpaid, landlord, &c., may pay the same, and recover from the first-named tenant as if it were a simple contract debt; s. 4.

Act not to extend to Scotland; s. 5.

The clauses of the act are as follow:—

An Act to improve the Law of Landlord and Tenant in relation to Emblements, to growing Crops seized in Execution, and to Agricultural Tenants Fixtures.

[24th July, 1951.]

1. Whereas it is expedient to amend the law to prevent or lessen the evils of the right to emblements, and the loss and injury arising therefrom, and also the law relating to growing crops seized under executions, and to agricultural fixtures: Be it therefore declared and enacted,—

1. That where the lease or tenancy of any farm or lands held by a tenant at rackrent shall determine by the death or cesser of the estate of any landlord entitled for his life, or for any other uncertain interest, instead of claims to emblements, the tenant shall continue to hold and occupy such farm or lands until the expiration of the then current year of his tenancy, and shall then quit, upon the terms of his lease or holding, in the same manner as if such lease or tenancy were then determined by effluxion of time or other lawful means during the continuance of his landlord's estate; and the succeeding landlord or owner shall be entitled to recover and receive of the tenant, in the same manner as his predecessor or such tenant's lessor could have done if he had been living or had continued the landlord or lessor, a fair proportion of the rent for the period which may have elapsed from the day of the death or cesser of the estate of such predecessor or lessor to the time of the tenant so quitting, and the succeeding landlord or owner and the tenant respectively shall, as between themselves and as against each other, be entitled to all the benefits and advantages, and be subject to the terms, conditions, and restrictions, to which the preceding landlord or lessor and such tenant respectively would have been entitled and subject in case the lease or tenancy had

determined in manner aforesaid at the expiration of such current year: Provided always, that no notice to quit shall be necessary or required by or from either party to determine any such holding and occupation as aforesaid.

2. That in case all or any part of the growing crops of the tenant of any farm or lands shall be seized and sold by any sheriff or other officer by virtue of any writ of *fiery facies* or other writ of execution, such crops, so long as the same shall remain on the farms or lands, shall, in default of sufficient distress of the goods and chattels of the tenant, be liable to the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of such growing crops by any such sheriff or other officer.

3. That if any tenant of a farm or lands shall, after the passing of this act, with the consent in writing of the landlord for the time being, at his own cost and expense, erect any farm-building, either detached or otherwise, or put up any other building, engine, or machinery, either for agricultural purposes or for the purposes of trade and agriculture, (which shall not have been erected or put up in pursuance of some obligation in that behalf,) then all such buildings, engines, and machinery shall be the property of the tenant, and shall be removable by him, notwithstanding the same may consist of separate buildings, or that the same or any part thereof may be built in or permanently fixed to the soil, so as the tenant making any such removal do not in anywise injure the land or buildings belonging to the landlord, or otherwise do put the same in like plight and condition, or as good plight and condition, as the same were in before the erection of anything so removed: Provided nevertheless, that no tenant shall, under the provision last aforesaid, be entitled to remove any such matter or thing as aforesaid without first giving to the landlord or his agent one month's previous notice in writing of his intention so to do; and thereupon it shall be lawful for the landlord, or his agent on his authority, to elect to purchase the matters and things so proposed to be removed, or any of them, and the right to remove the same shall thereby cease, and the same shall belong to the landlord; and the value thereof shall be ascertained and determined by two referees, one to be chosen by each party, or by an umpire to be named by such referees, and shall be paid or allowed in account by the landlord who shall have so elected to purchase the same.

4. That if any occupying tenant of land shall quit, leaving unpaid any tithe rentcharge for or charged upon such land which he was by the terms of his tenancy or holding legally or equitably liable to pay, and the tithe owner shall give or have given notice of proceeding by distress upon the land for recovery thereof, it shall be lawful for the landlord, or the succeeding tenant or occupier, to pay such tithe

recharge, and any expense incident thereto, and to recover the amount or sum of money which he may so pay over against such first-named tenant or occupier, or his legal representatives, in the same manner as if the same were a debt by simple contract due from such first-named tenant or occupier to the landlord or tenant making such payment.

5. Nothing in this act shall extend to Scotland.

UNITED LAW CLERKS' SOCIETY.

ANNIVERSARY FESTIVAL.

THE 19th Anniversary Festival of this useful Society took place on Wednesday, the 25th June last, in the Great Hall of Lincoln's Inn, kindly granted for the occasion by the Benchers. The Hall was full—nearly 500 gentlemen sat down to dinner. The Vice-Chancellor Sir J. L. Knight Bruce, was in the chair. Around him were Lord Cranworth, the Master of the Rolls, the Vice-Chancellor Sir G. Turner, Mr. Commissioner Goulburn, the Rev. Mr. Anderson, the preacher of the Inn, Mr. Freshfield, M. P., Mr. Baggallay, Mr. Ball, Mr. Bird, Mr. Cairns, Mr. Daniels, Mr. Follett, Mr. Forster, Mr. Goodeve, Mr. Macqueen, Mr. Palmer, Mr. Phillimore, Mr. Rogers, Mr. Shabbear, Mr. Southgate, Mr. Swanston, Mr. Bicknell, (the Registrar), Mr. Bigg, (one of the Trustees) Mr. Boys, Mr. Cholmley, Mr. Coverdale, (Vice-President of the Incorporated Law Society), Mr. G. Cox, Mr. Dawes, Mr. Frere, Mr. Hastings, Mr. Husband, Mr. Jennings, Mr. Johnson, Mr. Johnston, Mr. Kinderley, Mr. Laurie, Mr. Lee, Mr. Leech, Mr. Leman, Mr. Mangham, Mr. Maynard, Mr. M'Leod, Mr. Milne, Mr. Morris, Mr. Mourilyan, Mr. Phelps, Mr. Philpot, Mr. Secondary Potter, Mr. Redpath, Mr. Rose, Mr. Roumieu, Mr. Scadding, Mr. Smales, Mr. Townson, Mr. Walker, Mr. Ward, Mr. Westmacott, Mr. D. Williams, (Clerk of the Peace for Merioneth), and many other members of each branch of the profession.

The usual loyal Toasts were received with every mark of respect and devoted loyalty. In proposing the health of the Queen,

The Chairman said, that he rose to do the pleasant duty of proposing the health of a gracious Lady, to whom their loyalty was more than verbal, their allegiances more than formal, to whom in the presence, they rejoiced to recollect, of the earth's assembled representatives it had so recently been shown how liberty delights in monarchy—shown that a sincere and free people can feel and exhibit for their Sovereign, a reverent, dutiful, and cordial depth of personal affection, such as never Bourbon or Hapsburg received or hoped, or dreamed of.

The Chairman then asked the meeting to join in marking their respect for an illustrious person, the highest among those whose favour had opened to them the doors of that fair hall,—a Duke of Saxony whose ancestors had worn the English Crown,—a princely descendant of Cœur de Lion's sister,—and, to pronounce his

noblest designation last, the Consort of her Majesty. The people, the language, and the laws of England confess and boast the Saxon stamp, and they rejoiced to owe to the son of a kindred race,—to a man of the free, steadfast, and stout-hearted Saxon stock,—the deep and various debt of gratitude which bound this country to Prince Albert; and there was another Albert, in whom England also claimed an interest, and for whom she had in store the thanks he was in training to deserve, The Prince of Wales—

"Tu facito mox cum matura adoleverit etas, sic memor, et te animo repetentem exempla tuorum."

May the parental course direct, and the parental fortune follow!

Nor can they forget the other members of a family, under whose just and gentle sway the nation has attained to wealth without parallel, prosperity without example, and power beyond the visions of ambition. The Chairman then proposed the health of the Prince Albert, Albert Prince of Wales, and the other Members of the Royal Family.

The Secretary (Mr. Rogers) having read the Annual Report,

The Chairman then proposed prosperity to the United Law Clerks' Society, stating that they must have heard with satisfaction the report that had just been read. The gradual but steady growth of the institution, in proof of their regard for which they were assembled there that day, indicated the solidity, firmness, and longevity which they all so much desired for it. That report and their own knowledge, rendered superfluous any attempt to recount its objects in detail, but he would not refuse himself the pleasure, with their permission, of reading the compendious and clear statement of them which the rules contain:—"The Society consisted of clerks to barristers, conveyancers, attorneys, and proctors, and clerks in the public law offices. Its objects were, the establishment by the subscriptions of members and the contributions of the legal profession,—first, of a general benefit fund for affording pecuniary assistance in sickness, old age, or infirmity, and on death; secondly, a casual fund to relieve distressed law clerks, whether members or not, and their widows and families; thirdly, to procure situations for law clerks and to provide the profession with efficient and respectable clerks; fourthly, to form a library of legal and other works, by purchase and gift." His Honour stated that the internal regulations of the institution appeared to be dictated by a prudent and wise, a kind and manly spirit and to be adapted, under proper encouragement, to effectuate its intentions well. Of these objects what reasonable man could deny the general interest and importance? Without those men where would be the law itself? Thriving solicitors, gay proctors, prospering barristers, grave and pensive sergeants, justices of either Bench, chiefs and barons, and you, Master of the Rolls, (addressing Sir J. Romilly,) dignified in your peculiar oneness,—how, if he

might be pardoned a familiar phrase, how would you "get on" without these men? They are essential parts of the great fabric of society in one of its most important divisions. How much that is deeply interesting is committed to their fidelity! Not alone in the private and interior concerns of life so variously affecting the well-being and happiness of mankind, but in the proceedings by which wrong is redressed and justice civil and criminal obtained. How fatally might a single breach among their multifarious duties operate! But the generality of those men were necessarily remunerated on no high scale;—rarely could their savings be considerable;—seldom could there be any;—happy most of them, if there income carefully applied could afford the decent comforts of life, which with the majority, he feared, was not long. That concurrence of health, knowledge, ability, and a friend, which in some instances they had had the pleasure to witness, and of which there were some most worthy examples then in that hall,—that concurrence could be comparatively but rare, could befall comparatively few, though almost necessary to elevation amidst the mass. Of the rest, many were well, all more or less, educated, and though education, he agreed, could raise the spirit above poverty, yet in ordinary minds it had a tendency to make slender resources more keenly felt. Men thus circumstanced were placed in daily contact with affluence, in continual observation of its habits, and exposed to no common variety of temptation. Whatever then tended to sustain and encourage them in the right path, in sober but cheerful hope, in a just estimate of coarse gratifications, in self respect, in care for the future, is a public boon of magnitude; whoever joined in such a work was a solid benefactor to society. These were sufficient grounds to warrant him in earnestly recommending, as he did, the institution to their patronage and protection, without dilating on other considerations which it was unnecessary, he was sure, there to comment upon: he meant the claims of private regard, the remembrance of union in the early struggle, gratitude for respectful attachment, a sense of zealous and effectual, although it might be humble co-operation in success. These things survive the tomb, as did the beneficence of the institution, which, while it extended its care to the lonely wife and mourning infant, reminded them that neither should they allow death to extinguish the recollection of the faithful though humble fellow voyager, whose highest pride, were he still in life, would be, that still should his

"Little bark attendant sail,
Pursue the triumph and partake the gale."

And the institution had thriven under the benignant influence of generous friends, including many there present, to whom, on the behalf and in the name of the members of the Society, he offered their most respectful and sincere thanks. Allow me, said his Honour,

also, in my own name, as well as theirs, to repeat the expression of a hope for the continuance of that encouragement which they said is so much wanted, and which he said was wanted and deserved: for the irresistible claims on the well-husbanded and well-applied resources of the institution do not cease. Of their continued assistance, however, he had not only hope, he had faith, not doubting the especial interest which all within that hall must feel in an institution that united in one chain of sympathy every link of the great profession which had been everything and given everything to so many there present,—to himself certainly among the number: every link, he said, from the highest judgment seat in the Palace of Westminster to the darkest desk in the inkiest corner of the dingiest back office in Black Raven Court. He was led by those remarks to ask their permission to read to them two letters which appeared in a publication of the last year connected with these meetings, letters each of them doing honour to the writer, and deserving, as he ventured to think, their attentive consideration. The first was from the late Lord Cottenham, written, he believed, during his first Chancellorship on the 10th of September, 1836, to the Secretary of the Society, who had addressed to him a communication requesting his patronage. It is in these terms:—

"I have the honour to acknowledge the receipt of your letter of the 8th instant. I am gratified by the wish expressed by the Society that I should be named as its patron, and I beg to assure the members of it that it will always give me pleasure to patronize in fact as well as in form a Society which has for its object to enable industrious members of the profession to which I have the honour to belong to make provision for themselves and their families."

The other was from a solicitor stating his inability to attend the anniversary of last year, giving his reasons for it, and proceeding thus:—

"The best atonement I can make for my absence is to enclose a donation of ten guineas, and to request that I may be allowed to increase my annual subscription from two to three guineas. It has pleased Providence, within the short space of three years, to deprive me of three useful and faithful clerks, each leaving a widow, all of whom have received the most considerate pecuniary assistance from the funds of your excellent Society. I feel myself, therefore, in an especial manner bound to add my mite towards the support of your funds, and to express my humble hope that all my professional brethren who are blessed with the means of doing so will join with me in promoting the interest of your valuable institution."

His Honour then said he had a word to address to the younger among those for whose especial advantage the institution was immediately and directly designed. Let me point out to them, said his Honour, what by looking up this hall, not merely at the "storied windows richly light," but around those tables,

invested with living lessons, they might learn—First, alchemy, not that alchemy of insane wisdom and learned ignorance, canonised in the Italian proverb, that you should never trust a poor alchemist or a sick physician,—but the alchemy that did find the philosopher's stone, and found it and placed it within reach. Here, said his Honour, is a congress of philosophers who have discovered it, and tell the uninitiated that its name is "Industry"—Industry which, as a great prelate had said of other natural powers—steam and electricity—could do more than all the preternatural powers that men have wished and dreamed were ever imagined capable of effecting. Next, they might there receive instruction in genealogy, not less useful nor (*si Diis placet*) less authentic than Garter, Rouge, Dragon, or Portcullis could bestow. Here they might learn the pedigree of two noble and famous personages—virtue and honour. Of what stock did they come? They are the daughters of frugality. There, too, there is a school of that which is, "if no science, fairly worth the seven,"—worldly policy. Centuries on centuries have passed since it was well and wisely said, that "know thyself" came down from heaven. It did so, but it descended not alone,—there came down with it "Honesty is the best policy." His Honour concluded, saying he would detain them no longer from the toast which he had risen to propose; he entreated them to drink it heartily; there would be a blessing on the draught, for the sake of the hungry and thirsty, their soul fainting in them, who cried for help in their trouble, and whom it is a Godlike office, a heaven-sent privilege, to deliver from their distress. He proposed to them "Prosperity to the United Law Clerks' Society."

[To be continued.]

VALIDITY OF UNREGISTERED WARRANTS OF ATTORNEYS.

To the Editor of the Legal Observer.

SIR,—With reference to the letter of your correspondent, "F. M. B. C." (page 239, ante), the case of *Acraman and another, assignees, v. Herraman*, does not appear to me to bear upon his argument; that since the New Bankruptcy Act, (12 & 13 Vict. c. 106,) even if immediate judgment be signed on a warrant of attorney, there must still be an affidavit of due execution.

In the case in question, the warrant of attorney was executed on the 4th March, 1850, but judgment was not signed till the 11th March, 1851, which, instead of being within 21 days after the execution of the warrant of attorney was in fact more than a year after the execution thereof, and even then, a copy was filed without an affidavit of execution; the judgment, therefore, in this case, was void as against the assignees in bankruptcy, under the 8 Geo. 4, c. 39, and also against them and all the world under the 136th section of the Bankruptcy Consolidation Act.

Your correspondent states, with perfect ac-

curacy, that before the New Bankruptcy Act, if judgment were signed within 21 days without an affidavit of execution, it would stand good, the 2nd section of 3 Geo. 4 c. 39, is express to this effect, but your correspondent adds—"there is no such proviso under the new act."

It must be observed that the two statutes are not inconsistent with each other, the latter statute, however, does not repeal the earlier, for not only the earlier act is not mentioned among the repealed or in part repealed statutes, in Schedule A. of the latter act, but in the 136th section of such latter act, it is expressly provided to the effect,—that if after its commencement any warrant of attorney shall have been given by any such trader, and the same or a true copy that shall not have been filed within 21 days next after the execution thereof, in manner and form provided by 3 Geo. 4, c. 30, it shall be deemed fraudulent and void to all intents and purposes whatsoever.

There is a recognition of the earlier act without any exception as to its provisions.

If, then, the latter act neither repeals *in toto* nor in part the earlier act, does it not follow that there was no necessity to renew a provision contained in an unrepealed statute, and if, therefore, the earlier statute remains unrepealed, does not the proviso in the 2nd section still remain in force, by which no affidavit of due execution is required when judgment is signed within 21 days of the execution of the warrant.

This point is of great practical importance to the public and to the profession, and will, I trust, elicit further discussion.

I may add, that judgments not followed by immediate execution are almost invariably registered under the provisions of the 1 & 2 Vict. c. 110.

S. S.

LIST OF STATUTES RELATING TO THE LAW.

SESSION, 1851.

April 1.

Appointment of Vice-Chancellor.

Inclosure of Commons.

Passengers' Act Amendment.

April 11.

Designs' Act Extension.

May 20.

Annual Indemnity.

Apprentices' and Servants' Protection.

June 5.

Sale of Arsenic Regulation.

Property Tax.

July 3.

Stamp Duties' Continuance (Ireland).

Compound Householders.

Court of Chancery (Ireland).

Process and Practice (Ireland).

Prevention of Offences.

July 24.

Landlord and Tenant.

Ecclesiastical Jurisdiction.

Highway Rates.

Loan Societies.
 Marriages (India).
 Turnpike Acts' Continuance.
 Turnpike Trusts' Arrangement.
 Inhabited House Duty.
 Parliamentary Franchise.

August 1.

Chief Justices' Salaries.
 Tithe Rent Charge Assessment.
 Arrest of Absconding Debtors.
 Expenses of Prosecutions.
 Local Acts Preliminary Inquiries.
 Charitable Institutions' Notices.
 Commons' Inclosure, No. 2.
 Ecclesiastical Titles' Assumption.
 Copyhold, Inclosure, and Tithe Commissioners.
 Smithfield Market Removal.
 Stock in Trade.

August 7.

Court of Chancery Appeals.
 Administration of Criminal Justice.
 Attorneys' and Solicitors' Amendment Act.
 Law of Evidence.
 General Board of Health.
 Duchy of Lancaster.

SELECTIONS FROM CORRESPONDENCE.

COURTS LOST.

LOOKING at the various alterations in the law with regard to the appointment of constables and other matters, it appears to me to be in a great measure, if not altogether, useless for lords of manors to continue holding Courts Leet. I shall be glad, however, if any of your correspondents, conversant with the subject, can inform me whether in practice they have been generally discontinued.

ONE, &c.

CHURCH RATES.

CAN you ascertain and inform your readers, as to the progress made by the Commons'

Committee in this enquiry, and whether a Report may be expected this Session. I have heard it to be in contemplation to authorize the incumbent with the patron, and some score of the principal inhabitants to make a rate for the repair of the fabric, where it is capiously refused by a majority. CIVIS.

NOTES OF THE WEEK.

CLOSE OF THE SESSION.

The Session closed on Friday, the 8th inst. The Queen prorogued the Parliament in person.

FUSION OF LAW AND EQUITY.

In the recent number of the *Law Review*, (p. 228,) it is stated, as a *well authenticated rumour*, that it is the intention of the Government on the advice of the Attorney-General, to issue a *new commission* to inquire into the whole subject of the jurisdiction of Courts of Law and Equity, and their procedure with the view of considering the question of a fusion.

CERTIFICATE DUTY OF ATTORNEYS.

WE observe that several petitions, which ought to have been presented before the recent motion, have since made their appearance. "Better late than never." They show the still continuing demand for justice. But when hints are given that the Session has been unnecessarily lost, what shall we say to those who come with this tardy support at the eleventh hour? The Session, however, has not been lost, as some inconsiderate friends would suppose. A most important step forward has been made. It was not to be expected that 120,000*l.* *per annum* would be easily relinquished.

NEW MEMBER OF PARLIAMENT.

The Earl of Arundel and Surrey, for Lime-
 rick City, in the room of John O'Connell, esq.,
 who has accepted the office of Steward of her
 Majesty's Chiltern Hundreds.

RECENT DECISIONS IN THE SUPERIOR COURTS, AND SHORT NOTES OF CASES.

Lord Chancellor.

Truefitt v. Umpleby. July 4, 1851.

INJUNCTION.—RESTRAINING USE OF NAME
 OVER SHOP.—COLOURABLE EVASION.—
 COMMITMENT.

An injunction having been obtained by Mr. Truefitt, a hairdresser, to restrain the defendant, Jane Umpleby, also a hairdresser, a few doors off, from using his name on her shop, she altered the inscription on the plate to "Umpleby, hairdresser, conducted by Paul Truefitt," who it appeared was her foreman: Held, a colourable evasion of the injunction, and an appeal to discharge an order of the Vice-Chancellor Knight Bruce

for the defendant's commitment for the breach was dismissed, with costs.

THIS was an appeal from an order of Vice-Chancellor Knight Bruce for the commitment of Jane Umpleby for the breach of an injunction, which his Honor had granted on June 17 last, to restrain her from using the plaintiff's name on her shop. It appeared that the defendant carried on business as a hairdresser at No. 18, Burlington Arcade, and had used over her door the name of the plaintiff, who was a hairdresser at Nos. 20 and 21 in the Arcade, and that subsequently to the injunction the inscription on the plate was "Umpleby, hairdresser, conducted by Paul Truefitt," who was the defendant's foreman. The Vice-Chancellor having made an order on July

3 for the defendant's committal, this appeal was presented.

Schemberg, in support; *J. Parker*, contra.

The Lord Chancellor held, that the defendant had committed a breach of the injunction, and dismissed the appeal with costs.

July 30.—*Sturge v. Sturge*—Appeal from the late Master of the Rolls.

— 31.—*Attorney-General v. Cox; Greenwood v. Taylor*—Motion refused with costs for leave to amend the record in the late Vice-Chancellor of England's Court with a view of carrying out a judgment in the House of Lords.

— 31.—*Turner v. Turner*—Appeal from the late Vice-Chancellor of England dismissed with costs.

Aug. 1.—*In re Hewson*—Master's report confirmed approving of committee of lunatic.

— 1.—*In re Elwes*—Arrangement for appointment of committee to lunatic.

— 1.—*Heath v. Chapman*—Cur. ad. vult.

— 1, 2.—*Mackenzie v. Mackenzie*—Cur. ad. vult.

— 2.—*Hutton v. Bright; Bright v. Hutton*—Cur. ad. vult.

— 2, 4.—*Murray v. Sewell*—Appeal from the late Vice-Chancellor of England—Part heard.

Master of the Rolls.

Trye and others v. Corporation of Gloucester and others. June 5, 6, 24, 1851.

STATUTE OF MORTMAIN.—INVALIDITY OF BEQUEST DIRECTLY TENDING TO BRING FRESH LAND INTO MORTMAIN.

A bequest of money on trust to be expended in building a hospital or almshouse on land to be granted for that purpose within 10 years from the testator's decease, was held void under the 9 G. 2, c. 36, as tending directly to bring fresh land into mortmain; and the Court refused to give effect thereto although the requisitions of the testator as to the conveyance of land had been complied with, but dismissed a bill seeking a declaration to that effect, giving the costs of all parties out of the estate.

COL. JOHN HARVEY OLLNEY, of Cheltenham, by his will, dated Jan. 3, 1836, bequeathed to the plaintiffs a sum of 36,000*l.*, which was the amount of the purchase-money under an agreement with Wm. Charles King of three several mortgages of 12,000*l.*, 20,000*l.*, and 5,000*l.*, held by him on the estates of Lord Aldborough, in Ireland, upon trust to invest the same and accumulate the income during the life of his wife, and on her death to transfer so much as should be equal to 8,000*l.* sterling, into the names of the mayor and corporation of Gloucester upon trust, in the first place to raise 1,300*l.* to be laid out in building and establishing a hospital or almshouse for the city, in the event of any land being given to them

for the purpose of his charity within 10 years after his decease, under the 9 Geo. 2, c. 36, (the Mortmain Act.) and as to the residue of such 8,000*l.* in trust, to lay it out for the benefit of the city according to the trusts declared by him for the regulation of the hospital or almshouse, and there were similar bequests to the corporation of Tewkesbury, the ministers and churchwardens of Cheltenham, and the ministers and churchwardens of Winchcombe, of like sums, upon similar trusts, for founding a hospital or almshouse. The will also contained a direction that no part of the trust-moneys should be applied in purchasing land, and that if no such land should be granted within the 10 years, so much of the trust-money as would thereby become incapable of being applied should fall into the residuary personal estate, which he bequeathed to other parties. The testator died on Jan. 16, 1836, and his widow in 1838, and lands were granted and conveyances executed before the expiration of the 10 years, and duly enrolled in Chancery, with the exception of that to the corporation of Gloucester, the enrolment of which did not take place till 21 Jan. 1846. The bill now sought a declaration of the Court as to the validity of these bequests, and if valid for the proper directions for the recovery of the mortgage debts, and for accounts, &c.

K. Parker and Elderton, for the plaintiffs; *Lloyd and Lewin*, for the corporation of Gloucester; *Walpole and Jolliffe*, for the vicar and churchwardens of Cheltenham; *Hague*, for the corporation of Tewkesbury; *R. Palmer and Prior*, for the minister and churchwardens of Winchcombe; *W. M. James*, for the Attorney-General; *Roupell and Hall*, for the residuary legatees.

The Master of the Rolls, after taking time to consider, said that although the conveyances were executed in compliance with the requisitions of the testator, the bequests could not take effect, inasmuch as they were void as tending directly to bring fresh land into mortmain; the costs of all parties to come out of the estate.

July 30.—*Heath v. Samson* — Exceptions overruled to Master's report.

— 30.—*Bartlett v. Patten; Patten v. Bartlett*—Reference as to trust funds lost by default of trustees.

— 30.—*Duke of Devonshire v. Elgin* — Motion for injunction stand over.

— 31.—*Beresford v. Driver* — Order for production of documents.

— 31.—*Coyle v. Alleyne*—Order for extension of injunction granted *ad interim* until the determination of pending action at law.

— 31, Aug. 1.—*Lancashire and Yorkshire Railway Company v. Evans and others*—Injunction dissolved with costs.

Aug. 2.—*Munt v. Shrewsbury and Chester Railway Company*—Stand over.

— 2.—*In re Richards*—Order on solicitor for delivery of papers, &c.

Aug. 4.—*Cleobury v. Turner*—Judgment on construction of will and codicil.

— 4.—*Davis v. Barrett*—Plaintiff held entitled to priority and distress for foreclosure.

— 4.—*Ex parte South Wales Railway Company, in re South Wales Railway Company*—Reference back to the Master to review his taxation.

Vice-Chancellor Knight Bruce.

Ex parte Clegg, in re Clegg and others, Aug. 2, 1851.

ADJUDICATION IN BANKRUPTCY.—ANNUL- LING.—CONSENT OF CREDITORS.—AP- PEARING BY ATTORNEY.

Held, annulling, an adjudication in bankruptcy that the consent of 9-10ths of the creditors, under the 12 & 13 Vict. c. 106, s. 230, where some of the creditors, not residing out of England, appeared by letter of attorney, was a sufficient acceptance under the provisions of the act, of the offer of composition to enable the Commissioner to annul the adjudication.

This was a petition of appeal from the Commissioner, who had refused to annul an adjudication in bankruptcy under the 12 & 13 Vict. c. 106, s. 230, upon the acceptance of a composition by 9-10ths of the creditors present at the meeting convened for that purpose, on the ground that some of the creditors had appeared by attorney.

By s. 230, it is provided that "any bankrupt, at any time after he shall have passed his last examination, may call a meeting of his creditors, (whereof, and of the purport whereof, 21 days' notice shall be given in the *London Gazette*), and if the bankrupt or his friends shall make an offer of composition, and 9-10ths in number and value of the creditors assembled at such meeting shall agree to accept the same, another meeting for the purpose of deciding upon such offer shall be appointed to be holden, whereof such notice shall be given as aforesaid; and if at such second meeting 9-10ths in number and value of the creditors then present shall also agree to accept such offer," the Court may annul the adjudication; and by s. 231, "every creditor to the amount of 50*l.* and upwards residing out of England shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he may have time to vote thereat, and such creditor shall be entitled to vote by letter of attorney, executed and attested in manner required for a creditor's voting in the choice of assignees."

By s. 139, which relates to the choice of assignees, "any person authorised by letter of attorney from any such creditor, upon proof of the execution thereof, either by affidavit or by oath before the Court and one," is entitled to vote.

Swanson, in support; *W. W. Cooper*, for the assignees, did not oppose.

The Vice-Chancellor held, the consent by letter of attorney to be sufficient, and annulled the adjudication accordingly.

July 30.—*Gosch v. Gosch*—Judgment on special case under the 13 & 14 Vict. c. 60, filed by administrator.

31.—*Ex parte Gay, in re London and Birmingham Extension and Northampton, Deventry, Leamington, and Warwick Railway Company*—Order for a call on the contributories discharged, costs out of the estate.

Aug. 1.—*Murray v. Ingram*—On submission to injunction, order making it perpetual.

— 1.—*Key v. Key*—Decree for appointment of guardian to infant, for allowance for maintenance and education, and appointment of receiver of rents of estate of which his ward tenant for life.

— 2.—*In re Wilkinson, ex parte Shaw*—Stand over.

— 2.—*In re Cheltenham Hotel Company*—Order for transfer of reference for winding up from Master Senior to Master Brougham.

— 2.—*Ex parte Stothert, in re Duns and others*—Stand over, with leave to do before the Commissioner, and institute a suit if necessary.

— 2.—*In re Coleridge*—Order by consent for compromise.

— 4.—*Ex parte Hill and another, in re Tring, Reading, and Basingstoke Railway Company*—Leave to solicitors to go in before the Master to prove their debt.

— 4.—*Cubitt v. East and West India Dock and Birmingham Junction Railway Company*—Injunction dissolved restraining defendants from proceeding at law under the 8 & 9 Vict. c. 18.

— 4.—*Marquis of Salisbury v. Great Northern Railway Company*—Injunction granted to restrain defendants interfering with plaintiff's land.

Vice-Chancellor Lord Cranworth.

Allen v. Loder. June 25, 1851.

INJUNCTION.—ACTION OF EJECTMENT.— EQUITABLE TITLE.

An injunction was dissolved to restrain an action of ejectment being brought to recover possession of certain land by the defendants who had, upon purchasing it first, taken a conveyance thereof without the persons having the legal estate being made parties, but had subsequently obtained a conveyance of the legal estate and taken possession; the plaintiff, who had ejected him, claiming under a prior equitable title, of which the defendant had had no notice.

This was a motion to dissolve the common injunction which had been granted, to restrain an action of ejectment brought against the plaintiff by the defendant, who had purchased

certain plots of land in Berkshire, but in consequence of the persons who had the legal estate not being made parties to the conveyance, he had only an equitable title, but subsequently he took a conveyance of the legal estate, and took possession. The plaintiff, however, who claimed under a prior equitable title ejected him, whereupon he brought his action, to restrain which the common injunction had been obtained.

The *Vice-Chancellor* said, that as when the defendant was ejected by the plaintiff, he was rightfully in possession and had the legal estate; and as he had not admitted but had expressly denied he had any notice of the plaintiff's prior equitable title, the injunction must be dissolved.

July 26.—*In re Hodson's Trust*—On petition for payment of fund out of Court, reference to the Master.

— 26.—*Pollard v. Doyle*—*Cur. ad. vult.*

— 31, Aug. 1.—*Woollett v. Kelk*—Order by consent for stay of proceedings.

Aug. 1.—*In re Hirst's Trust*—Order on petition for payment of fund out of Court.

— 2.—*Mentove v. Carter*—Judgment as to costs.

— 4.—*In re Wolverhampton, Chester, and Brakenhead Junction Railway Company, ex parte Hobroyd*—Leave to appeal from Master's decision inserting name on list of contributories.

— 4.—*In re Same, ex parte Ingham*—The like.

Vice-Chancellor Turner.

Handley v. Wood. July 8, 1851.

STATUTE OF LIMITATIONS.—INTEREST ON CHARGE CREATED BY WILL WHICH WAS ON LITIGATION FOR 13 YEARS.

Held, that executors to a will, which was in litigation for 13 years, were only entitled upon its being established, to interest for six years at 4 per cent., on a charge which had been created thereby under the powers of a settlement, in accordance with the provisions of the 3 & 4 Wm. 4, c. 42.

This bill was filed to raise a sum of 5000*l.*, which the testator was empowered under a marriage settlement to charge with interest from the date of the settlor's death. It appeared that under the marriage settlement in question, certain real estates were conveyed on the trusts therein named, and that power was reserved to the settlor to charge the settled estates with 5,000*l.*, either by deed or will, and to limit a term as security for the same. The will, under which the charge was created, had been in litigation for 13 years, and upon its being established, the executors filed this bill.

Schomberg, for the plaintiffs, urged that the time for which interest was to be paid should not be limited to six years.

The *Vice-Chancellor* said, that the 3 & 4 W. 4, c. 42, only excepted by sect. 42, the case where a prior mortgagee was in possession, and

that the executors were only entitled to a decree for raising the 5,000*l.* and interest at 4 per cent. for six years.

July 30.—*Smith v. Hurst*—*Cur. ad. vult.*

— 31.—*Grenfell v. Wycombe Railway Company*—Injunction dissolved, on payment of moneys into Court.

— 31.—*Wright v. Woodham*—Motion to set down special case.

Aug. 1.—*Wilkes v. Maule*—Order on legatee's claim, for an account.

— 1, 2.—*In re Stamfordham Free School*—Stand over.

— 2.—*Attorney-General v. Skinners' Company, in re Tunbridge School*—Order on petition relating to scheme.

— 4.—*Newman v. Clutton*—Judgment on special case under 13 & 14 Vict. c. 60.

Court at Queen's Bench.

Biddulph v. Chamberlain. June 12, 1851.

ACTION FOR LIBEL.—JUSTIFICATION.—DIVISIBLE ISSUE.—COSTS.

A rule was made absolute to set aside an order of a judge at chambers disallowing the costs of certain witnesses in an action for a libel charging the plaintiff with being the occupier of a certain ditch and cesspools which were a public nuisance, and that he had, upon being summoned before the justices under the Sanitary Act fenced with the question, to which the defendant pleaded a justification,—although such witnesses were examined for the purpose of proving that the ditch was not a nuisance, which the jury negatived, on the ground that the plea was not divisible, as it justified the whole libel, and that they had found generally for the plaintiff.

This was a rule nisi to set aside an order of Mr. Justice Patteson disallowing the plaintiff's the costs of certain witnesses in this action, which was brought for a libel published on Sept. 14 last, in the *Hereford Times*, and imputing to the plaintiff that he was the occupier of a certain ditch and cesspools in the town of Ledbury, which were a public nuisance, and injurious to the health of the inhabitants, and further stating that he had been called upon by the defendant to cleanse it, and upon his refusal had been summoned under the Sanitary Act before the magistrates, and that upon their holding it was not a nuisance at the time another application was made, and then charged the plaintiff with fencing with the question before the magistrates. The defendant pleaded "not guilty," and several pleas of justification. On the trial before Mr. Justice Patteson, at Hereford, the plaintiff obtained a verdict with 40*s.* damages, and a rule nisi which had been granted on April 17 last, to enter the verdict for the defendant or for a new trial, had been discharged on May 8. The jury found that the ditch was a nuisance, but that the inhabitants had a right to drain into the ditch, and

that the plaintiff did not fence with the question before the justices. The plaintiff having, however, called several witnesses to prove the ditch was not a nuisance, Mr. Justice Patteson made an order disallowing the costs of such witnesses, and this rule had therefore been obtained.

Whateley, Q. C., and Phipson, showed cause, on the ground the plea of justification raised two divisible issues, whether the plaintiff kept a nuisance, and whether he had misconducted himself before the magistrates.

Greaves, Q. C., in support.

The Court, (per *Lord Campbell, C. J., Patterson and Coleridge, J. J.*; dissentiente, *Erle, J.*, referred to *Prudhomme v. Fraser*, 2 A. & E. 645,) said, that as the plea of justification justified the whole libel, and did not raise a divisible issue, it could not, as it was not divisible on the record, be considered divisible, and that therefore, notwithstanding the jury had found one of the allegations in respect of the ditch being a nuisance for the defendant, the general finding was for the plaintiff, who was entitled to the entire costs. And the rule was accordingly made absolute to rescind the order.

Court of Common Pleas.

Croft v. Beale. June 14, 1851.

PROMISSORY NOTE.—JOINT AND SEVERAL. —VALID CONSIDERATION.

To an action brought on a joint and several promissory note given by the defendant and his brother to the plaintiff, the defendant pleaded that it had been given as a collateral security for a debt due from his brother to the plaintiff on a mortgage at the plaintiff's request, and that it was the only consideration for the same. It appeared that the note had been given for a stay of proceedings against his brother. The jury having found for the defendant, the Court refused to set the verdict aside and grant a new trial, or to enter the verdict for the plaintiff, non obstante veredicto.

A RULE nisi had been granted on the motion of *Watson, Q. C.*, on June 3 last, to set aside the verdict for the defendant and for a new trial, or to enter it for the plaintiff, non obstante veredicto, in this case. The action was brought on a joint and several promissory note for 400*l.*, which had been given by the defendant *James Beale* and his brother *John Beale* to the plaintiff, to which the defendant pleaded that the note had been given as a collateral security for a debt due from his brother *John* to the plaintiff, that it was given at the plaintiff's request, and that it was without consideration. It appeared on the trial before *Mr. Justice Williams*, at the Nisi Prius sittings for Middlesex, that upon *John Beale* being unable to pay a sum of 1,000*l.* which he had borrowed from the plaintiff on the mortgage of his house, the defendant had, on the request of the plaintiff, joined in the note, and as appeared from the cross-examination of the de-

fendant's brother, the proceedings against him had been stayed. The defendant having obtained a verdict, this rule had been obtained. *Willes* and *Bramwell* showed cause; *Watson, Q. C.*, in support.

The Court discharged the rule.

Court of Exchequer.

Doe dem. — *v. Hellyer.* June 27, 1851.

ACTION OF EJECTMENT.—TENANT IN COMMON.—EVIDENCE OF EXACT AMOUNT OF HIS INTEREST IN POSSESSION.—NEW TRIAL.

A tenant in common having obtained a general verdict in an action of ejectment, subject to a rule to set it aside and enter it for the defendant, the Court, inasmuch as there was no evidence of the exact amount of his interest in the property, to enable a writ of possession for his share to issue, made the rule absolute for a new trial, on the ground of the defendant being liable in the event of a writ for the whole issuing, to the other tenants in common.

A RULE nisi had been obtained on May 3 last, to set aside a verdict for the lessor of the plaintiff, and to enter it for the defendant. The action was in ejectment on behalf of a tenant in common with other parties, to recover possession of certain lands, and on the trial before *Mr. Baron Platt*, at the York Assizes, he obtained a general verdict, subject to this rule.

Watson and *Warren*, showed cause, on the ground that as the lessor of the plaintiff had established his right to some portion of the property, although he had not proved the exact amount of his interest, he was entitled to his verdict as against the defendant.

Atherton, in support.

The Court, (per *Parke* and *Alderson, BB.*, dissentiente, *Platt, B.*) held, that as the lessor of the plaintiff was only a tenant in common he was only entitled to a writ of possession for the exact amount of his interest, or otherwise the defendant might be prejudiced in reference to the other tenants in common, and there being no evidence as to that acknowledgment, the rule was made absolute for a new trial.

Court of Exchequer Chamber.

Lacey v. Reginam. June 18, 20, 1851.

INDICTMENT FOR PERJURY.—BEFORE COUNTY COURT JUDGE.

An indictment for perjury, committed on the trial of a plaintiff in the County Court brought by the plaintiff as widow and administratrix of her deceased husband, set forth that the trial took place in the Whitechapel County Court held in the Court-house in Osborn-street, Whitechapel, in the county of Middlesex, before James Manning, Esq., Sergeant-at-Law, and it appeared that she was examined as a witness, and in answer to a question falsely swore that she had not

been tried at the Central Criminal Court for uttering a forged bill of exchange: Held, on error from and confirming the judgment of the Court of Queen's Bench, that the indictment was sufficient.

THIS was a writ of error from the Court of Queen's Bench upon an indictment brought against Ann Lavey for perjury committed on the trial of a plaintiff brought by her as widow and executrix of John Lavey deceased, against one Robert Sellers, "in the Whitechapel County Court, held in the Court-house, in Osborne-street, Whitechapel, in the County of Middlesex, before James Manning, Esq., Serjeant-at-Law." It appeared that the plaintiff in error was examined as a witness, and had

falsely sworn, in answer to a question, that she had never been tried at the Central Criminal Court for uttering a forged bill of exchange.

Willes, for the plaintiff in error, on the ground the indictment did not aver that the County Court was constituted under the 9 & 10 Vict. c. 95, and did not show the offence was committed in respect to a matter over which the County Court had jurisdiction, nor that the oath was administered in a judicial proceeding of which the Court had cognizance. Prendergast, contra.

The Court, after taking time to consider, held that the objections to the indictment could not be sustained, and affirmed the judgment of the Court below.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW RELATING TO TRUSTEES.

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lunacy, p. 147.

Courts of Equity :

Law of Costs, p. 168.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, pp. 204, 246, 265.]

APPOINTING NEW TRUSTEES.

1. Circumstances in which it is improper for a retiring trustee to appoint a new trustee without communication with the *cestuis que trust*. *Marshall v. Sladden*, 7 Hare, 428.

2. *Cestui que trust*.—Where a testator devised estates to trustees, their heirs and assigns, on certain trusts, and the surviving trustee devised the trust estates upon the same trusts on which he held the same: Held, that the *cestuis que trustent* were entitled to have new trustees appointed of the original will. *Ockleston v. Heap*, 1 De G. & S. 640.

3. By Court of three trustees in place of two.—It is not contrary to the practice of the Court to appoint three trustees in the place of two nominated in a will containing no power to appoint new trustees. *Birch v. Cropper*, 2 De G. & S. 255.

See *Power of Appointment ; Duties*, 3.

BREACH OF TRUST.

1. Knowledge of by *cestui que trust*.—Waiver of right to complain.—A *cestui que trust* discovering a breach of trust, but not receiving any benefit from it, or conniving in it for any purpose, and not recognising the transaction, is not precluded from complaining of it merely on the ground that he abstained from making such complaint until long after he first knew of

it. *Phillipson v. Gatty*, 7 Hare, 516; *Gatty v. Phillipson*, ib. 516.

2. Replacing stock in specie and not the money for which it sold.—Where trustees having power to invest on government or real security, and vary such investment from time to time, sold out stock for the purpose of investing the produce of such stock in a mortgage, which they were not justified in taking, it was held that the Court could not treat the sale of the stock as lawful, and the investment as unlawful, so as to satisfy the trust by replacing the money; but that the whole must be treated as one unjustifiable transaction, and that the trustees must replace the stock. *Phillipson v. Gatty*, 7 Hare, 516; *Gatty v. Phillipson*, ib. 516.

See *Power of Sale and Exchange*.

CHARITY.

Discretion of trustees in endowment of perpetual curacy.—The titles of an impropriate rectory were conveyed by the impropriator on trust, to pay the income to such orthodox minister as should from time to time be placed and settled in the perpetual curacy of the church, with the approbation and consent of the major part of the trustees; and if any such should be appointed without such approbation and consent, other trusts were declared of the income during his incumbency: Held, that the consent was wholly discretionary, and might be withheld for an insufficient reason, or none; and, therefore, in a case where the trustees declined giving their consent unless the patron of the cure and the proposed curate would concur in arrangements for building a parsonage, the Court declined to interfere. *Attorney-General v. Mosely*, 2 De G. & S. 398.

CONTINGENT INTEREST.

In trust fund brought into Court.—A party having a contingent interest in a trust fund may, in a proper case, have it brought into Court for his protection; but he must show some sufficient ground for it. *Ross v. Ross*, 12 Beav. 89.

CORPORATION.

Trustees under an inclosure act.—Trustees under an act of parliament for dividing and inclosing a common, held to be a corporation, by implication. *Ex parte Newport Marsh Trustees*, 16 Sim. 346.

COSTS.

1. *Parental influence.*—The relation of father and daughter does not of itself render the invalidity of an arrangement between persons thus related respecting a reversionary interest of the daughter so doubtful as to justify a trustee in refusing to transfer a fund in pursuance of the arrangement, without the indemnity of the Court. A trustee so refusing, and who did not show that he had endeavoured to ascertain the real nature of the transaction, was decreed to pay costs. *Firma v. Pulham*, 2 De G. & S. 99.

2. *Fund in Court.*—Lien on behalf of deceased trustee.—A trust fund, consisting of a debt from the estate of a testator, was recovered in a creditors' suit by the *cestuis que trust*; in which suit the two trustees of the fund were defendants. The two trustees (for reasons which were not deemed to be sufficient) appeared separately; and one of them dying before the cause was heard on further directions, it was held that he had acquired no lien for his costs on the trust fund in Court; and the petition of his personal representative, that his costs might be taxed, and provided for out of the fund, was refused, with costs. *Malins v. Greenway*, 7 Hare, 391.

Case cited in the judgment: *Bowyer v. Beamish*, 2 J. & L. 228.

CONSTRUCTION.

Testator devised all his real estates whatsoever and wheresoever, to Grace T., her heirs and assigns, charged with 50l. to J. W.

Held, that estates of which the testator was a trustee, did not pass by the devise. *Rackham v. Siddall*, 16 Sim. 297.

Case cited in the judgment: *Lord Braybrooke v. Inskip*, 8 Ves. 417.

DUTIES.

1. A testatrix equitably entitled to an estate in fee, devised it to her executors in trust to sell. The proceeds of such sale, and her personal estate, were to form a general fund for the payment of her debts, &c., and the legacies given by her in a certain paper marked A. The testatrix died without heirs, and the paper A. could not be found; but there were some debts which were unsatisfied: Held, that the trustee of the legal estate was bound to convey to the devisees, without reference to the purposes for which the conveyance was required; and that he was not entitled to retain the estate upon paying the debts of the testatrix. *Onslow v. Wallis*, 1 H. & T. 512; 1 M'N. & G. 506.

2. A. being entitled, in fee, to freehold hereditaments, the legal estate in which was vested in N., devised the hereditaments to O. and P. in trust to sell them, for payment of her debts, and died without an heir. N. offered to pay the debts, and, subject to the payment of them,

claimed to hold the hereditaments for his own benefit. But the Court decreed him to convey them to O. & P. *Onslow v. Wallis*, 16 Sim. 483.

3. *Appointment of new trustees.*—It is the duty of trustees, having power to appoint new trustees, to make such appointment impartially, as between their *cestuis que trust*, and not without communication with them. *O'Reilly v. Alderson*, 1 Hare, 101.

See *Incumbrances*.

ENDOWMENT OF CHURCH.

See *Charity*.

EXECUTORS.

Causa probandi.—By the decree in a suit instituted by persons beneficially interested under a will, one object of which was to charge two of the executors with a debt which the third (who had become insolvent) owed to the testator at his decease, an inquiry was directed at the suggestion of the solvent executors, whether, if they had taken measures to call in the debt, it could have been recovered; but neither they nor the plaintiffs prosecuted the inquiry. On the hearing for further directions, the Court held that the solvent executors ought to have prosecuted the inquiry; notwithstanding they must have proved a negative; and, as they had not done so, it ordered them to pay the amount of the debt into Court, with interest from the testator's death. *Stiles v. Guy*, 16 Sim. 230.

HEIR-AT-LAW.

Feme covert declining to acknowledge.—Where the real estates of an intestate were sold under a decree in an administration, and the heir-at-law was a *feme covert*, who declined acknowledging the conveyance to the purchaser. *Semble*, that the heir was a trustee within 1 Will. 4, c. 60. *Billing v. Webb*, 1 De G. & S. 716.

HUSBAND AND WIFE.

1. *Motion to pay money out of Court to purchasers under mortgage.*—Notice to husband's assignees.—A married woman, having a general power of appointment over a reversionary trust fund, subject to a previous life estate in another person, appointed it by way of mortgage, with a power of sale, under which it was afterwards sold. Her husband became bankrupt, and, after the determination of the life estate, the trustees paid the fund into Court, under 10 & 11 Vict. c. 96. The purchasers thereupon presented a petition for a transfer of the fund to them. The petition was only served upon the trustees. The Court made the order, subject to a discretion that it should not be drawn up for a fortnight, and that the husband's assignees should be served with notice that the fund would be transferred, if no objection were made within that period. *Ex parte Stutely*, 1 De G. & S. 703.

See *Heir-at-Law*.

2. *Purchase with trust-moneys.*—Principal and agent.—The trustees of a marriage settlement, being empowered by it to invest the

trust funds in freeholds or copyholds of inheritance, with the consent of the husband and wife, authorised the husband to purchase a certain estate as an investment of part of the trust funds; and afterwards they sold out a sufficient part of those funds to pay for the estate, and the husband received the proceeds. The estate was copyhold for lives, and the purchase was made without the wife's consent: *Held*, nevertheless, that, *as between the husband and the trustees*, he must be considered to have purchased the estate for them. *French v. Harrison*, 17 Sim. 111.

INCUMBRANCES.

Raising money to discharge incumbrances.—Reciprocal duties of trustees and cestuis que trust, where it becomes necessary to raise money to discharge incumbrances on, or otherwise deal with the trust property. *Marshall v. Staden*, 7 Hare 428.

INFANTS.—*Right reserved.*—Decree as between the claimant of property and the trustee who claimed to hold the same property in trust for an infant defendant, reserving the right of the infant defendant. *Blay v. Lutyens*, 8 Hare 159.

Trust created by intestate dead.—Position, duty, and liability of a trustee for infants of an estate created by an intestate dead or a dead of doubtful validity, and which is impeached by other parties. *Blay v. Lutyens*, 8 Hare 159.

DECEASED AND EQUITABLE ESTATES.

Devise to trustees and their heirs upon divers trusts in succession, some requiring the legal estate to remain in the trustees, and others which in themselves would not do so, the whole legal fee remains in the trustees. *Brown v. Whiteley*, 8 Hare 145.

Case cited in the judgment: *Horton v. Horton*, 7 T. R. 652.

LIABILITY.

1. A party assuming to act as heir or devisee of a trustee, and committing an act which, if done by the trustee, would have been a breach of trust, cannot relieve himself of liability by asserting that he was not acting as trustee. *Rickham v. Siddall*, 1 M. & G. 607.

2. A person who assumes the character of a trustee, incurs the responsibility of a trustee. *Rickham v. Siddall*, 16 Sim. 297.

3. *Loan of trust-money on personal security.*—*Consent of tenant for life.*—Of cestui que trust.—Where stock stood invested in trust for the mother for life, with remainder to her son and daughter and their children, the daughter knew of an application by the son for a loan from the trustees of part of the trust-money, upon his personal security, and that the trustees were willing to make the loan, with the consent of her mother, the tenant for life, and that the loan was, in fact, afterwards made. The daughter objected to the loan in her communications with her mother, but did not other-

wise oppose it, and had not any communication with the trustees on the subject: *Held*, that this was not such acquiescence on the part of the daughter to the loan as to preclude her from charging the trustees with the breach of trust, in a suit instituted seven years after the transaction took place.

Held also, that the daughter was not precluded from so charging the trustees, by the fact that she knew that the mother had (untruly) stated to her son that she (the daughter) had consented to the loan, such statement of the daughter's consent never having been communicated to the trustees, or constituted any part of the sanction or authority under which they acted.

It was not necessary to decide the simple case, whether, if the daughter had permitted the son, in the belief that the daughter assented to it, to obtain the loan from the trustees, they could have availed themselves of any defence to the suit, which the son might have, as against the daughter; for, in this case, the letters of the son to the mother, requesting the loan, and upon which the mother's consent was given, proposed not to affect the daughter's rights as against the trustees.

Phillipson v. Gatty, 7 Hare 516; *Gatty v. Phillipson*, ib. 516.

Case cited in the judgment: *Evans v. Bicknell*, 3 Ves. 124.

4. Lending trust funds to cestui que trust.

Repayment of money.—Where trustees lent the trust-moneys to one of the cestuis que trust, upon a contract which constituted a breach of trust, the Court, in a suit by the trustees against all the cestuis que trust, refused as against the cestui que trust who had obtained the loan, to make a decree for the repayment of the money, contrary to the terms of the contract. *Phillipson v. Gatty*, 7 Hare 516; *Gatty v. Phillipson*, ib. 519.

Case cited in the judgment: *Franco v. Franco*, 3 Ves. 75.

See *Costs*; *Executors*; *Payment into Court*.

MORTGAGE.

Investment of trust money on house property, dependent on performance of covenants.—An investment by trustees of 2,183*l.* trust funds, which they were empowered to lend on real security, in a mortgage of house property in a town, occupied for commercial purposes, and valued at 2,800*l.*, a value also, in some measure dependent on the performance of covenants,—held not to be justified. *Phillipson v. Gatty*, 7 Hare 516; *Gatty v. Phillipson*, ib. 516.

Case cited in the judgment: *Stickney v. Sewell*, 1 My. & Cr. 8.

See *Westeyan Chapel*.

PAYMENT OF FUND INTO COURT.

When motion refused.—Motion to pay trust fund into Court refused, on the ground that there was no allegation of danger, and that the fund might, if necessary, be sufficiently pro-

ected by a *distringas*. *Ross v. Ross*, 12 Bear. 89.

POWER OF APPOINTING TRUSTEES.

1. *Continuance of solicitor as manager*.—Trustees ought not to exercise a power of selecting new trustees for the mere purpose of continuing the trust property under the management of a particular solicitor, even if the trustees they select be otherwise unobjectionable. *Marshall v. Sladden*, 7 Hare, 428.

2. *Effect of residence of trustee out of jurisdiction*.—Under a power enabling a surviving or continuing trustee to appoint a new trustee in the place of a trustee dying, going to reside abroad, becoming incapable of acting, &c., the surviving trustee, although himself residing abroad, may appoint another trustee in the place of the one deceased.

Although taking up his permanent residence abroad in such a case does not, *ipso facto*, deprive a trustee of his office, yet it is such a disqualification as entitles the *cestui que trust* to have a new trustee appointed in his place. *O'Reilly v. Alderson*, 8 Hare, 101.

3. *Not given to new trustees appointed by Court*.—Appointment without reference to Master.—The power of appointing new trustees in a settlement, provided that the new trustees so to be appointed from time to time should have the same power as the trustees named in the settlement. The power was incapable of being exercised, in consequence of neither of the trustees acting. On new trustees being appointed in a suit, *held*, that the Court could not give them the power of appointing new trustees.

Specified persons were appointed by the Court new trustees without a reference. *Oglander v. Oglander*, 2 De G. & S. 381.

See *Appointing new trustees*.

POWER OF SALE AND EXCHANGE.

Breach of trust.—Construction of a power of sale and exchange, in a settlement.

Circumstances in which the exercise of a power of sale, although not inconsistent with the terms in which the power is created, would, notwithstanding, be a breach of trust. *Marshall v. Sladden*, 7 Hare, 428.

See *Breach of trust*.

RELIEF ACT.

1. *Setting aside deed*.—Decree.—Where a fund has been brought into Court under the Trustees' Relief Act, (10 & 11 Vict. c. 96,) and a deed under which a party claims the money is held invalid, the Court cannot, on petition, order it to be set aside.—*Semble*.

In such a case the Court will preface an order dismissing the petition with a declaration that it considers the deed to be invalid.

Observations upon the Trustees' Relief Act. *In re Bloye's Trust*, 2 H. & T. 140; 1 M'N. & S. 488.

2. *Distribution of fund*.—Jurisdiction.—To enable the Court to distribute a fund under the Trustees' Indemnity Act, it must stand to an account which separates it from the other as-

sets, and disconnects it from all the other trusts of the will. *In re Everett*, 12 Bear. 485.

3. The surviving trustee of a sum of stock, neglected, for 28 days after a request in writing had been made to him by persons who had been duly appointed new trustees to transfer the stock to them. The Court *held*, that they were persons absolutely entitled to the stock, within the meaning of the Trustee Act, 1850, and ordered the stock to be transferred to them. *Esparte Russell*, 1 Sim. N. S. 404.

REMOVAL OF TRUSTEE.

Former trustee who had retired.—A trustee who retired and allowed a new trustee to be appointed, without communication to his *cestui que trust*, is not a necessary party to a suit complaining of such new appointment, and seeking to displace such new trustee and appoint others,—all relief against the retired trustee being waived. *Marshall v. Sladden*, 7 Hare, 428.

SURVIVING TRUSTEE.

Served with copy bill but not subpoena.—Appointment of new trustees.—A. & B., the representatives of a surviving trustee, were made parties to a suit respecting the trust property, and were served with a copy bill, and not with subpoena. They objected from the beginning, but did not intervene. New trustees were appointed, and seven years afterwards an order was made, in the absence of A. & B., for the distribution of the fund and the delivery out of Court of the title-deeds. A petition by A. & B. to discharge the order was dismissed, with costs. *Doyle v. Doyle*, 12 Bear. 471.

SET OFF.

By trustees of damages or costs in action brought as executors.—Where a testatrix devised a freehold estate to trustees upon trust, to sell, and to pay 140*l.* part of the proceeds, to A., and the residue of the proceeds to B., and appointed the devisees in trust her executors: *Held*, that in a suit by A. and her husband against the trustees, for payment of the 140*l.*, the latter were not entitled to set-off the damages or costs of an action, brought by them as executors against the husband, to recover a deposit note in the hands of the wife, forming part of the testatrix's estate.

The will authorised the devisees in trust to give receipts: *Held*, that the *cestui que trust* of the proceeds, after payment of 140*l.*, was an unnecessary party, and the bill was dismissed against him, with costs. *Reeve v. Ricker*, 1 De G. & S. 624.

WESLEYAN CHAPEL.

Mortgagor and mortgagee.—The trust-deeds of certain Wesleyan Methodist chapels, contained powers of raising money by mortgage, for the purposes of the trusts: *Held*, that any of the trustees of the chapels might be mortgagees under this power, and that, if they were such mortgagees, they might exercise all the rights of mortgagees, although in opposition to the trusts. *Attorney-General v. Hardy*, 1 Sim. N. S. 338.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, AUGUST 16, 1851.

LEGAL RESULTS OF THE SESSION OF PARLIAMENT.

By an unbusiness-like and objectionable arrangement—not perhaps without precedent—but the repetition of which we may be excused for hoping it may not be our duty to record, several bills involving important legal changes stood over to the last week of the Session! The House of Lords, as must have been anticipated from previous discussions in that assembly, disagreed with certain so-called *amendments* introduced in the House of Commons. Conferences took place between Committees of the two Houses to discuss the matters in difference, and the evening of the day previous to that on which her Majesty ascended the throne to prorogue parliament had actually arrived, before it was possible to ascertain whether certain measures, to which much consideration had been given, and in the fate of which the legal profession was peculiarly interested, were or were not to have the valid force of laws.

Amongst the bills placed in this state of jeopardy by the lateness of the period at which they were brought up from the Commons, were, the Law of Evidence Amendment Bill, the County Courts' Further Extension Bill, the Criminal Law Amendment Bill, and the Patent Law Amendment Bill. We learn, from the records of parliament, that two of these bills—the Law of Evidence Amendment Bill, and the Administration of Criminal Justice Improvement Bill, finally obtained the Royal Assent, but until copies of these acts could be procured from the Queen's printer, and compared with the latest editions printed by order of the House of Commons, those most interested were left to glean from the imperfect and often inevitably inaccurate reports appearing in the daily newspapers, the nature of

the compromise entered into with respect to the alterations upon which the two Houses of Parliament differed. It augurs ill for the success of the speculative changes introduced in the law, when we find that their announcement produces so little concurrence of opinion between the two branches of the Legislature, to say nothing of the diversity of opinion prevailing outside the walls of Parliament; and it is hardly possible to be assured that the intentions of the Legislature have been effectually carried out, when the most important alterations are made at the last moment of the Session, and when no time is left for remedying errors or supplying omissions inadvertently made.

The application of these observations to the acts of the Session of 1851, will be more conveniently made when the statutes are laid before our readers *in extenso*, with explanatory notes and comments, in furtherance of the arrangement already announced. All that is at present proposed is, to direct attention generally to the principal bills affecting the law and its practitioners, which have either obtained or failed to obtain the final sanction of the Legislature.

Amongst the legal measures passed with the general concurrence of the profession, we may mention the act, passed at an early period of the Session, authorising the *re-appointment of a third Vice-Chancellor*; the act more recently passed for strengthening the Court of Chancery by giving the Chancellor two *assistant Judges upon appeals*; and the bill introduced by Lord Harrowby providing for the *arrest of absconding debtors*. The act introduced by Lord Campbell for the *improvement of criminal justice*, we have some reason to apprehend, did not meet with that full and deliberate consideration either from the

Legislature or the legal profession, the important changes effected by it demanded, and we have only to express our hope that it will not produce those practical difficulties in the administration of criminal justice, which some persons, not unacquainted with this branch of the law, apprehend.

Of the successful measures brought forward during the Session, that undoubtedly which was the most fully discussed, upon which the greatest difference of opinion prevails, and which, upon the whole, may be regarded as effecting the most important change in the law, as well as in the practice of the Superior Courts, is the *Law of Evidence Amendment Act*. The provisions of this bill, and the various alterations made in it during its progress through parliament, were so frequently and so fully discussed in this publication, that we shall be excused for avoiding a renewal of the arguments on the present occasion. As already intimated, Lord Truro, as those who are prone to disparage him assert, *obstinately*, but as we conceive, firmly and wisely, refused to assent to the passing of the bill, until the words rendering a wife competent and compellable to give evidence for or against her husband were struck out, and the bill has accordingly become law, with the omission of this provision.

Whatever be the merits of the principle embodied in the act, we still retain the opinion, that it would have been safer and better to have suspended legislation on the subject, until the Common Law Commissioners, who had expressly called for the suggestions of the profession on this particular question, had the opportunity of reporting their views upon it. We were amongst those who could not perceive the urgency which called for the exclusion of light from such a source, after all the pains that had been taken to collect it, and we still venture to think that the responsible officers of the Crown would have better performed their public duty by disregarding clamour and resisting the progress of the measure upon this ground. The experiment, however, has now to be tried for good or evil. That it may be successful, every one who desires to see the laws loved and respected must desire. The ardent promoters of the bill, however, appear to anticipate that it may not be wholly satisfactory in the first instance, and are evidently alarmed lest the learned judges of the Superior Courts may find some opportunity of expressing an opinion that its operation will not be fa-

vourable to justice. To provide against the effect of such an expression of opinion, it is sought beforehand to describe the judges as prejudiced, and the sentiment they are expected to utter as the results of a previous determination to decri the measure. Upon this principle, a writer in the recent number of the *Law Review* indulges in the following not very delicate piece of irony in respect of the judges:—

"All accounts agree in describing the anxiety felt, both on the subject of County Courts and on the Evidence Bill, as *inane*. To that anxiety we mainly ascribe the reluctance of their adversaries to offer any opposition. Judges, we believe, exerted themselves almost in a canvass against the measure, but they could obtain no support to their prejudices. The current was too powerful for even these sages of the law to stem. Not a voice was raised to save the remains of exploded error. The venerable dissentients will, therefore, be reduced to the painful necessity of surviving (as we trust they long may) their favourite notions; they will only have the solace of, from time to time, expressing their 'more than doubts' of the wisdom of the legislature, and they will, as often as any miscarriage happens in any case to which the new system is applied, have the 'painful duty cast upon them' of reluctantly mentioning to what the catastrophe is 'beyond all question' owing. This relief, obtained in about one case out of 1,000, will serve to bear up their drooping spirits, while they wholly obliterate from their recollection the history of the other 999."

The writer of this article, we doubt not, belongs to a school by which the judges are regarded, at the best, as respectable old women, and any one that hints a doubt as to the perfection of the *new system* as only a short remove from a natural born idiot.

Passing from the bills that have become law, to those rejected by the one or the other House of Parliament, we have to enumerate the *Registration of Assurances* and the *Charitable Trusts Bills*, which, the Commons declined to entertain in consequence of the advanced period of the Session at which they were severally brought forward for discussion; and the *County Courts further Extension Bill* and the *Patent Law Amendment Bill*, which the Lords rejected for similar reasons. The County Courts Bill, although it originated in the Lords, was, as our readers are already informed, essentially a new measure when it was returned from the Commons, and with respect to both this and the Patent Law Amendment, as well as the Registration and Charitable Trusts Bills, it may be

fairly stated that, unless the two Houses of Parliament respectively abdicated their independent functions, and were satisfied without deliberation to record their assent to measures sent from the one house to the other, it was impossible that those bills, or any of them, should have become law. Irrespective of their relative merits, it may be hoped that the public will not suffer from their postponement; whilst mischievous consequences would have inevitably ensued from their precipitate and hasty adoption.

The measures last referred to should, perhaps, be considered as postponed, rather than rejected, but it is already announced that many other measures will be proposed during the next Session of Parliament. To some of those, in respect of which the note of preparation is sounded thus early, we shall take the first opportunity of directing attention. Meanwhile, as regards the Session that has closed, the most ardent law reformers must admit that legal questions received their due share of attention from the legislature and the general public. It is, however, matter for deep regret that questions of this nature have not always been discussed in a more candid spirit, and, above all, that, at a crisis in which union amongst all the classes of the profession is so desirable, the absence of union is so signally manifested.

PROROGATION OF PARLIAMENT.

LAW REFORM.

THE following is the only passage in her Majesty's Speech on Friday the 8th instant, at the close of the Session, bearing on Law Reform:—

"The attention you have bestowed on the Administration of Justice in the Courts of Law and Equity, will, I trust, prove beneficial, and lead to further improvements."

The Speaker of the House of Commons, however, was somewhat more communicative on that interesting subject. The right hon. gentleman, on addressing her Majesty, said—

"Our attention has been directed to various measures for the improved administration of justice. We have modified the Law of Evidence, so as to secure a more complete and satisfactory investigation of truth; we have simplified many of the details both of criminal and civil procedure; and we confidently hope that the important addition we have made to the judicial establishment will so far facilitate the appellate jurisdic-

tion of the Court of Chancery, as also of the Judicial Committee of your Majesty's Privy Council, that the expenses and delays which have hitherto been inseparable from their proceedings, will for the future be materially diminished.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

LAW OF EVIDENCE.

14 & 15 VICT. c. 99.

Recited proviso in s. 1 of 6 & 7 Vict. c. 85, repealed; s. 1.

Parties to be admissible witnesses; s. 2.

Nothing herein to compel persons charged with criminal offence to give evidence tending to criminate himself, &c.; s. 3.

Not to apply to proceedings in consequence of adultery, &c.; s. 4.

Nothing to repeal any provisions of the Wills' Act, 7 W. 4, and 1 Vict. c. 26; s. 5.

Common Law Courts authorized to compel inspection of documents whenever equity would grant discovery; s. 6.

Foreign and colonial acts of state, judgments, &c. proveable by certified copies, without proof of seal or signature or judicial character of person signing the same; s. 7.

Apothecaries certificates admissible without proof of seal; s. 8.

Documents admissible without proof of seal, &c. in England and Wales equally admissible in Ireland; s. 9.

Documents admissible without proof of seal, &c. in Ireland equally admissible in England and Wales; s. 10.

Documents admissible without proof of seal, &c. in England, Wales, or Ireland equally admissible in the Colonies; s. 11.

Registers of British vessels and certificates of registry admissible as *prima facie* evidence of their contents, without proof of signature, &c.; s. 12.

Where necessary to prove conviction or acquittal of person charged, not necessary to produce record, but may be certified under hand of clerk of Court; s. 13.

Examined or certified copies of documents admissible in evidence; s. 14.

Certifying of false documents a misdemeanor; s. 15.

Court, officer, commissioner, arbitrator, &c. may administer oaths; s. 16.

Persons forging seal, stamp, or signature of certain documents, or wilfully uttering same, guilty of felony; s. 17.

Act not to extend to Scotland; s. 18.

Interpretation of "British colony;" s. 19.

Commencement of Act, 1st November, 1851; s. 20.

The clauses of the act are as follow :—

An Act to amend the Law of Evidence. [14th August, 1851.]

Whereas it is expedient to amend the Law of Evidence in divers particulars: Be it therefore enacted as follows :—

1. So much of section 1 of the 6 & 7 Vict. c. 85, as provides that the said act shall “not render competent any party to any suit, action, or proceeding individually named in the record, or any lessor of the plaintiff, or tenant of premises sought to be recovered in ejectment, or the landlord or other person in whose right any defendant in replevin may make cognizance, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part,” is hereby repealed.

2. On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any Court of Justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf any such suit or action, or other proceeding may be brought or defended, shall, except as herein-after excepted, be competent and compellable to give evidence, either *vidæ voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding.

3. But nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to criminate himself or herself, or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband.

4. Nothing herein contained shall apply to any action, suit, proceeding, or bill in any Court of Common Law, or in any Ecclesiastical Court, or in either House of Parliament, instituted in consequence of adultery, or to any action for breach of promise of marriage.

5. Nothing herein contained shall repeal any provision contained in cap. 26 of the statute passed in the 7 Wm. 4, and 1 Vict. c. 26.*

6. Whenever any action or other legal proceeding shall henceforth be pending in any of the Superior Courts of Common Law at Westminster or Dublin, or the Court of Common Pleas for the County Palatine of Lancaster, or the Court of Pleas for the County of Durham, such Court and each of the Judges thereof may respectively, on application made for such purpose by either of the litigants, compel the

opposite party to allow the party making the application to inspect all documents in the custody or under the control of such opposite party relating to such action or other legal proceeding, and, if necessary, to take examined copies of the same, or to procure the same to be duly stamped, in all cases in which previous to the passing of this act a discovery might have been obtained by filing a bill or by any other proceeding in a Court of Equity at the instance of the party so making application as aforesaid to the said Court or Judge.

7. All proclamations, Treaties, and other acts of state of any foreign state or of any British colony, and all judgments, decrees, orders and other judicial proceedings of any Court of Justice in any foreign state or in any British colony, and all affidavits, pleadings, and other legal documents filed or deposited in any such Court, may be proved in any Court of Justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, either by examined copies or by copies authenticated as herein-after mentioned; that is to say, if the document sought to be proved be a proclamation, treaty, or other act of state, the authenticated copy to be admissible in evidence must purport to be sealed with the seal of the foreign state or British colony to which the original document belongs, and if the document sought to be proved be a judgment, decree, order, or other judicial proceeding of any foreign or colonial Court, or an affidavit, pleading, or other legal document filed or deposited in any such Court, the authenticated copy to be admissible in evidence must purport either to be sealed with the seal of the foreign or colonial Court to which the original document belongs, or, in the event of such Court having no seal, to be signed by the judge, or, if there be more than one judge, by any one of the judges of the said Court, and such judge shall attach to his signature a statement in writing on the said copy that the Court whereof he is a judge has no seal; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as herein-before respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence without any proof of a seal where a seal is necessary, or of the signature; or of the truth of the statement attached thereto; where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

8. Every certificate of the qualification of an apothecary which shall purport to be under the Common Seal of the Society of the art and mystery of apothecaries of the city of London shall be received in evidence in any Court of Justice, and before any person having by law or by consent of parties authority to hear, receive, and examine evidence, without any proof of the said seal or of the authenticity of the said certificate, and shall be deemed sufficient proof that the person named therein has been from the date of the said certificate duly quali-

* See Sections 14, 15, 16 and 17 of Wills Act..

And no practice or contempt in any part of England or Wales:

9. Every document which by any law now in force or hereafter to be in force is or shall be admissible in evidence of any particular in any Court of Justice in England or Wales without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence to the same extent and for the same purposes in any Court of Justice in Ireland, or before any person having in Ireland by law or by consent of parties authority to hear, receive, and examine evidence, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same:

10. Every document which by any law now in force or hereafter to be in force is or shall be admissible in evidence of any particular in any Court of Justice in Ireland without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence to the same extent and for the same purposes in any Court of Justice in England or Wales, or before any person having in England or Wales by law or by consent of parties authority to hear, receive, and examine evidence, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same:

11. Every document which by any law now in force or hereafter to be in force is or shall be admissible in evidence of any particular in any Court of Justice in England or Wales or Ireland without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence to the same extent and for the same purposes in any Court of Justice of any of the British colonies, or before any person having in any of such colonies by law or by consent of parties authority to hear, receive, and examine evidence, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same:

12. Every register of a vessel kept under any of the acts relating to the registry of British vessels may be proved in any Court of Justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original, and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same, upon payment of the sum of 1s.; and every such register or such copy of a register, and also every certificate of registry,

granted under any of the acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence in any Court of Justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, as *prima facie* proof of all the matters contained or recited in such register when the register or such copy thereof as aforesaid is produced, and of all the matters contained or recited in or endorsed on such certificate of registry when the said certificate is produced.

13. And whereas it is expedient, as far as possible, to reduce the expense attendant upon the proof of criminal proceedings: Be it enacted, That whenever in any proceeding whatever it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person, or a copy thereof, but it shall be sufficient that it be certified or purport to be certified under the hand of the clerk of the Court or other officer having the custody of the records of the Court where such conviction or acquittal took place, or by the deputy of such clerk or other officer, that the paper produced is a copy of the record of the indictment, trial, conviction, and judgment or acquittal, as the case may be, omitting the formal parts thereof.

14. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice, or before any person now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted, and which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding 4d. for every folio of 90 words.

15. If any officer authorized or required by this act to furnish any certified copies or extracts shall wilfully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of a misdemeanour, and be liable, upon conviction, to imprisonment for any term not exceeding 18 months.

16. Every Court, judge, justice, officers, Commissioner, arbitrator, or other person now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively:

17. If any person shall forge the seal, stamp or signature of any document in this act

tioned or referred to, or shall tender in evidence any such document with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to transportation for seven years, or to imprisonment for any term not exceeding three years nor less than one year, with hard labour; and whenever any such document shall have been admitted in evidence by virtue of this act, the Court or the person who shall have admitted the same may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person for such period and subject to such conditions as to the said Court or person shall seem meet; and every person who shall be charged with committing any felony under this act, or under the act of the 8 & 9 Vict. c. 113, may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in the county, district, or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence laid and charged to have been committed, in any county, district, or place in which the principal offender may be tried.

18. This act shall not extend to Scotland.

19. The words "British Colony" as used in this act shall apply to all the British territories under the government of the East India Company, and to the islands of Guernsey, Jersey, Alderney, Sark, and Man, and to all other possessions of the British Crown, where-soever and whatsoever.

20. This act shall come into operation on the 1st day of November, in the present year.

NEW RULES AND ORDERS

OF THE COUNTY COURTS.

[Continued from p. 275, ante.]

Parties to Actions.—[See Amendment.—Rules Nos. 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, and 106.]

34. *Summons to appear to a Plaintiff.*—9 & 10 Vict. c. 95, s. 59.—The summons to appear to a plaintiff shall be in the form in the schedule, and shall be dated of the day on which the plaint was entered, and shall correspond in substance with the plaint, and the date thereof shall be the commencement of the suit.

35. Such summons may be returnable either at the next Court after the entry of the plaint, or at any subsequent Court within three months.

36. The clerk of the Court shall issue the summons to the bailiff forthwith after the plaint is entered.

37. The clerk shall in cases where, by these rules, particulars are required, annex to the summons a copy of the plaintiff's particulars, sealed with the seal of the Court; and shall

also make and deliver to the bailiff a true copy of the summons for indorsement, as hereafter required, and it shall be the duty of the bailiff to ascertain, by examination and comparison with the summons, the correctness of the copy.

38. 9 & 10 Vict. c. 95, s. 60.—Leave to issue a summons out of the district shall be granted if the judge is satisfied by statement on oath, that the party applying has a cause of action, and not otherwise, but it shall not be necessary to enter a plaint before applying for such leave.

39. Where a summons issues by leave of the Court, it shall be in the form in the schedule, and no written order of the Court for such leave shall be necessary.

40. Concurrent summonses, grounded on the same plaint, may, by leave of the Court, be issued into different districts on payment of the additional fees on such increased number of summonses; and where a previous summons or summonses have not been served, successive concurrent summonses may issue in like manner and on the same terms as successive summonses may be issued: provided, that the costs of more than one summons shall not be allowed against the other party, unless by order of the judge.

41. Where a summons has not been served, successive summonses may be issued by the clerk on the application of the plaintiff, under the circumstances and on the conditions following, unless the judge shall otherwise order: if the non-service has been caused by the defective description given by the plaintiff of the defendant, or of his place of business or residence, or by any other act or neglect of the plaintiff, successive summonses shall be issued only on payment of the poundage for a summons and the bailiff's fee for serving the same; if the non-service has not been so caused, and has not been caused by the neglect of the bailiff, successive summonses shall be issued only on payment by the plaintiff of the bailiff's fee for serving the same; if the non-service has been caused by the neglect of the bailiff, the poundage for such summons shall be paid by the bailiff, and such successive summons shall be served by him without further fee; and the successive summons or summonses shall bear the same date and number as the summons first issued, and shall be a continuance of the first summons: Provided that the costs of such successive summons or summonses shall not be allowed against the defendant, unless the judge shall otherwise order.

42. *Service of Summons to appear to a Plaintiff.*—9 & 10 Vict. c. 95, s. 59.—A summons to appear to a plaintiff must be issued and served at least ten clear days before the holding of the Court at which it is returnable: provided that a summons may be issued at any time before the holding of any Court on production by the plaintiff of an affidavit showing that the defendant is about to remove out of the jurisdiction of the Court, and service, of such summons at any time before the return

day may be deemed good service, if at the hearing, it shall be proved on oath to the satisfaction of the judge that such party was about to remove out of the jurisdiction of the Court, but in every such case the judge may, in his discretion, and on such terms as he shall think fit, adjourn the hearing.

43. The service of the summons, except in the cases hereinafter specially provided for, must be either personal, or by delivering the same to some person, apparently of sixteen years of age at least, at the house, or place of dwelling, or place of business, of the defendant, but no place of business shall be deemed the place of business of the defendant unless he shall be the master, or one of the masters thereof.

44. Where a defendant is living or serving on board of any ship or vessel, it shall be sufficient service to deliver the summons to the person on board who has, at the time of such service, charge of such ship or vessel.

45. Where a defendant is residing or quartered in any barracks, and serving her Majesty as a soldier or marine, it shall be sufficient service to deliver at such barracks the summons to the adjutant of the corps, or any officer or serjeant of the company to which such soldier or marine belongs.

46. Where a defendant is a prisoner in a gaol, it shall be sufficient service to deliver the summons at such gaol to the governor or any head officer in charge thereof.

47. Where a defendant is working in any mine or other works underground, it shall be sufficient service to deliver the summons at such mine or works to the engine-man, hanks-man, or other person in charge of the mine or works.

48. Service of the summons may be effected on a railway company or other corporation by delivering the summons at any station or office of the defendant within the district of the Court in which the summons is to be served, to a secretary or clerk of the defendant.

49. Where a defendant keeps his house or place of dwelling or place of business closed, in order to prevent a bailiff from serving the summons, and such summons shall have been affixed on the door of such house or place of dwelling or place of business, such affixing shall be good service.

50. Where a bailiff is prevented by the violence or threats of the defendant, or of any other person or persons in concert with him, from personally serving such summons, and the bailiff leaves the same as near to the defendant as practicable, such leaving shall be good service.

51. Where the summons has not been served personally, and the defendant does not appear, in person or by his attorney or agent, at the return day, it must be proved on oath to the satisfaction of the judge, that the service of such summons has come to the knowledge of the defendant before the return day, except in the cases specially mentioned in the rules 48, 49, and 50.

52. If the service of the summons has been

personal, the bailiff who served the same shall indorse on the copy of the summons hereinbefore directed to be delivered to him by the clerk, the fact of such service; and if the service has not been personal, he shall indorse on the copy of the summons the statement which has been made by the person to whom the summons was delivered, or other circumstances from which it may be inferred that the service of the summons has come to the knowledge of the defendant, and if the summons has not been served, the reason of such non-service shall be indorsed on such copy; and the bailiff shall deliver such copy so indorsed to the clerk at the time of making the return required by rule 20; and such copy shall be produced at the time of the trial by the clerk, and shall be filed by the clerk.

53. Whenever a summons has been served in one of the modes hereinbefore mentioned, but it appears that it has come to the knowledge of the defendant less than ten clear days before the day of hearing, the cause may, at the discretion of the judge, proceed or be adjourned, whether the defendant appears or not.

54. 9 & 10 Vict. c. 95, s. 61.—The summons where required to be served in a foreign district, shall be transmitted by the clerk to the bailiff of the foreign Court, and such bailiff is authorized and required to serve the same.

55. 9 & 10 Vict. c. 95, s. 61.—The summons, where required to be served in a foreign district, shall be served by the bailiff of that district, unless by special order of the judge of the home Court, the bailiff of the home Court shall be directed to serve it: Provided that in the latter case, in taxing costs between party and party, the costs of such service shall not be allowed to an amount greater than if the same had been effected by the bailiff of the foreign Court, unless the judge shall otherwise order.

56. Where the summons is required to be served in a foreign district by the bailiff of that district, he shall forthwith after serving the summons transmit the copy thereof with an affidavit of such service to the clerk of the home Court, which affidavit shall state the same particulars as are required by rule 52, to be indorsed on a summons which has been served; and if such affidavit be defective it shall be amended by such bailiff at his own expense in conformity with the direction of the home Court, and if such bailiff fail so to do, the judge of the home Court may direct the treasurer of the foreign Court to withhold from the bailiff his fees in respect of such summons, and in such case, the treasurer shall not pay the same without the authority in writing of the judge of the home Court for that purpose.

57. Where the summons is required to be served in a foreign district, but cannot be served in due time according to the exigency of these rules, by the bailiff of that district, he shall forthwith transmit the summons to the clerk of the home Court, with the reason indorsed thereon why the same could not be served.

58. 9 & 10 Vict. c. 45, s. 62.—Where the summons is required to be served in a foreign district, the clerk of the home Court shall in all cases demand and receive from the plaintiff the fee to be paid to the person before whom the affidavit is sworn, as well as the fee to the bailiff for swearing such affidavit, and in case the summons is not served, such fees shall be returned to the plaintiff, if demanded, and if not so demanded within one calendar month, shall be paid over to the treasurer, and shall become part of the general fund of the home Court.

59. Where an affidavit of service is sworn before a judge of a County Court, the fee on such affidavit shall be taken by the clerk, and accounted for to the treasurer at his audit; and shall be applied as the judges' fees are applicable.

60. The above rules as to the mode, but not as to the time, of service of summonses to appear to a plaint, shall apply to the mode of service of all notices and processes whatsoever, except where otherwise directed by statute or by these rules.

61. No summons, order, or other process, or notice, shall be served on Sunday, Christmas-day, or Good-Friday, or any day appointed by royal proclamation for a public fast or thanksgiving; but such days shall be counted in the computation of the time required by these rules.

62. *Payment into Court whether before or after Judgment.*—9 & 10 Vict. c. 95, s. 82.—Where the defendant is desirous of paying money into Court, it must be so paid five clear days before the return day of the summons, with costs proportionate to the amount paid in, together with the fee for paying in and for notice of payment to the plaintiff: and the clerk shall within 24 hours from the time of such payment send to the plaintiff notice thereof by pre-paid post letter: Provided, that at any time before the hearing of the cause, the defendant may pay money into Court, with such costs as aforesaid, and the clerk shall give notice thereof to the plaintiff as aforesaid: but where money is so paid in less than five clear days before the return day of the summons, it shall be lawful for the Court to order the defendant to pay such costs as the plaintiff shall have incurred in preparing for trial, before the notice of such payment was received by him, or in attending the Court.

63. 9 & 10 Vict. c. 95, s. 82.—If the plaintiff elect to accept in full satisfaction of his claim, such money as shall have been paid into Court by the defendant, and shall send to the defendant by pre-paid post letter, or leave at the defendant's place of dwelling or place of business, a written notice, stating such acceptance, two clear days, or within such reasonable time as the time of payment by the defendant has permitted, before the return day of the summons, the action shall abate, and the plaintiff shall not be liable to any further costs. But in default of such notice from the plaintiff, the cause may proceed.

64. The fee, on paying money into Court, shall be paid by the party paying the same; and the fee, on paying money out of Court, shall be paid by the party receiving the same.

65. *Inspection of documents.*—Where in any action, the defendant is desirous of inspecting any deed, bond, or other instrument under seal, or any written contract or other instrument, in which he has an interest, and which shall be in the possession, power, or control of the plaintiff, the defendant may, within five days from the service of the summons to appear, give notice by pre-paid post letter or otherwise, that he desires to inspect such instrument at any place to be appointed by the plaintiff, and the plaintiff shall appoint a place accordingly, and if the plaintiff shall neglect or refuse to appoint such place, or to allow the defendant or his attorney to inspect it within three days after receiving such notice, the judge may, in his discretion, on the day of hearing, adjourn the cause for the purpose of such inspection, and make such order as to costs as he shall think fit.

66. *Withdrawal by plaintiff.*—If the plaintiff be desirous of not proceeding in the cause, he may give notice thereof to the clerk and to the defendant, by pre-paid post letter, and after the receipt of such notice the defendant shall not be entitled to any further costs than those incurred up to the receipt of such notice, unless the judge shall otherwise order.

67. *Defences.*—9 & 10 Vict. c. 95, s. 76, and s. 81.—Where the defendant intends to rely on a set-off, infancy, coverture, Statute of Limitations, or discharge under a bankrupt or insolvent act, his notice shall contain the particulars hereinafter-mentioned: Provided, that in case of non-compliance with this rule, or those rules applying to such six grounds of defence, and the plaintiff will not consent at the hearing to permit the defendant to avail himself of such defence, the judge may, on such terms as he shall think fit, adjourn the hearing of the cause to enable the defendant to give such notice.

68. 9 & 10 Vict. c. 95, s. 76.—Where a defendant intends to set off any debt or demand alleged to be due to him by the plaintiff, he must give notice thereof in writing to the clerk of the Court, and deliver to such clerk a particular of such set-off, at least five clear days before the return day of the summons.

69. 9 & 10 Vict. c. 95, s. 76.—Where a defendant intends to rely on the defence of infancy, he must give notice thereof in writing to the clerk of the Court, at least five clear days before the return day of the summons, setting forth in such notice the supposed place and date of his birth.

70. 9 & 10 Vict. c. 95, s. 76.—Where a defendant intends to rely on the defence of coverture, she shall give notice thereof in writing to the clerk, at least five clear days before the return day of the summons, setting forth in such notice the place and date of marriage, together with the Christian name and surname of her husband.

71. 9 & 10 Vict. c. 95, s. 76.—Where a defendant intends to rely on the defence of any Statute of Limitations, he shall give notice thereof in writing to the clerk of the Court, at least five clear days before the return day of the summons.

72. 9 & 10 Vict. c. 95, s. 76.—Where a defendant intends to rely on the defence of a discharge under any statute relating to bankrupts, or any act for the relief of insolvent debtors, he shall give notice in writing to the clerk of the Court, at least five clear days before the return day of the summons, setting forth in such notice the date of his certificate, discharge, or final order, and the Court by which such certificate, discharge, or final order was granted or made.

73. In all cases, unless otherwise expressly ordered, when any notice or statement is required to be given by any party, such party shall, at least five clear days before the day of hearing, deliver to the clerk as many copies thereof as there are opposite parties, and an additional copy to be filed, and all the said copies shall be signed by the party giving such notice, his attorney or agent; and the clerk shall, within 24 hours from the time of receiving the same, transmit, by prepaid post letter, one copy of such notice to each of the said parties.

74. Where the defence is a tender, such defence shall not be available, unless, before or at the hearing of the cause, the defendant pays into Court (which may be without costs) the amount alleged to have been tendered.

75. Evidence.—Witnesses may be summoned without leave of the Court either in the home or foreign district, and the clerk shall forthwith on issuing the summons deliver it to the bailiff.

76. It shall be sufficient if a summons to a witness be served a reasonable time before the actual hearing.

77. 9 & 10 Vict. c. 95, s. 85.—Where either party proposes to give a judgment of a Superior Court or any other document whether printed or written, in evidence, he may, by a demand in writing make a reasonable time before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the document to be read in evidence without proof; and if such demand be not made, no costs of proving such document shall be allowed, unless the judge shall otherwise order. If such demand be not complied with, and the judge think it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the event of the cause.

78. 9 & 10 Vict. c. 95, s. 83.—Either party may call the other or the wife of the other party as a witness, and appearance may be enforced by summons as in the case of any other witness.

79. Jury.—9 & 10 Vict. c. 95, s. 70.—Every notice of a demand of a jury, must be made in writing to the clerk of the Court two

clear days before the day of hearing, and the summonses to the intended jurors shall be delivered to the bailiff forthwith.

80. 9 & 10 Vict. c. 95, s. 70.—Where notice of a demand of a jury has not been given in due time, or if at the hearing, both parties desire to try by a jury, the judge may, on such terms as he shall think fit, adjourn the cause in order that the necessary steps for such trial may be taken, and the trial shall take place accordingly.

81. Cases of interpleader, and of replevin, may at the instance of either party be tried by a jury, and in the same manner as ordinary actions.

82. The poundage fee upon summonses shall not be payable upon any summons to a jury or jurymen, but the bailiff's fees for service on each jurymen shall be payable as upon the service of a summons to appear to a plaintiff.

83. In all cases to be tried by a jury, the number of jurymen summoned shall be ten, unless the judge shall otherwise order.

[To be continued.]

ATTORNEYS' CERTIFICATE DUTY.

POSTPONEMENT OF REPEAL EXPLAINED.

It will be recollected that it was only in last Session that the House of Commons was induced, for the first time, favourably to receive the application for the repeal of the duty;—and notwithstanding the measure was opposed by the whole force of the government, in all its stages, the several Law Societies and solicitors in the country, by their united exertions, obtained four divisions in favour of the bill, and being defeated only at a late hour of the night, on the motion for the third reading, they lost no time in renewing the appeal to Parliament, in the present Session. In the first instance, the Provincial Law Societies and solicitors throughout the country, and in Ireland and Scotland, addressed letters to their respective representatives, with the view of inducing government to include the remission of the tax in their financial plan. Having ascertained, by a personal deputation to the minister, that no concession would be made, numerous petitions were presented; but it was not until the 8th of July that Lord Robert Grosvenor could bring the subject before the house.

The government have certain days appropriated to their business, but even they are liable, as we know, to great procrastination. The other members of parliament have to ballot for the position in which their business must stand amongst the orders of the day, and on several occasions Lord R. Grosvenor

was unfortunate in the late number he drew. It was, however, deemed very important again to have the principle of the bill affirmed by a decided majority, and this has been effected; but it was impossible, at that late period of the Session, to carry the bill, in opposition to the government, through both houses; and it was thought prudent to reserve all further efforts until the next Session. The profession, indeed, must be aware that a remission of taxation against the consent of the ministry, can only be obtained by repeated representations to parliament.

The Law Societies, and the profession generally, who feel the injustice of this grievance, will, of course, not relax their efforts to remove it; but, on the contrary, will use their influence, before the next Session, with their several representatives, in order that Lord Robert Grosvenor may, on an early day in the Session, again bring forward his bill, if the government should not expressly include the remission of the tax in their estimates for the ensuing year.

UNITED LAW CLERKS' SOCIETY.

ANNIVERSARY FESTIVAL.

[Continued from page 279.]

The *Solicitor-General* then rose and said he had been requested to propose to them a toast which scarcely needed any recommendation, and to which he felt quite inadequate to do justice. It was a toast connected with names highly respected by them all, but more especially dear to the feelings of the Members of that Society. They had received at the hands of those noble lords whose names were more immediately connected with this toast the great benefit and advantage of their patronage and favour. It would ill become him to comment upon the ability, the judicial talent, or the other distinguished qualities of the public or political character of those noble lords; but he might be permitted to observe upon that portion of their conduct which was more immediately connected with that Association in this work of charity and benevolence. He had to propose to them the health of the Lord Chancellor, Lord Lyndhurst, and the other patrons of this Society. Of the Lord Chancellor he might say that it had been his advantage to have known him from the time of his own childhood—to have known him at a time which he was always himself proud of referring to, when he commenced his career of life in a humble portion of the profession to that in which he afterwards advanced, and where he distinguished himself by that high quality which, as their excellent Chairman had told them, was the only true alchemy, the quality of industry. He had since that shown higher and greater quali-

ties—he had since that shown himself to be possessed of that quality which the greatest and best perhaps our country ever boasted of, attributed all his wonderful discoveries of the laws of the universe to, namely, patient thought. Not, then, venturing further to comment upon him with reference to his distinguished abilities and intellect, he had only further to remark, that during the long time that he had had the privilege of knowing him he had been equally and uniformly distinguished by his generosity, kindness, and benevolence. With regard to Lord Lyndhurst, he also here might say that he had in some degree a peculiar knowledge of his lordship with reference to his own position, inasmuch as he commenced his professional career within a few months of his first chancery office, and he received a few months before the close of his last chancery office from his hands the pleasing distinction which relieved him from the more heavy drudgery of their profession as an Equity draftsman. During the whole of his judicial career, he was confident all who had witnessed it as he himself had witnessed it, would bear testimony to the constant union of urbanity with dignity which distinguished that noble lord, that general courtesy of demeanour towards all, that total freedom from all prejudice whether of party or otherwise, that absence of all personal predilection, and that disinterested kindness which distinguished Lord Lyndhurst, and had made him one of the earliest friends of the Institution. Alas, that they should have had in that interval to recollect a melancholy gap in the patrons of the Society, which had been alluded to in the Report of their secretary, and which had been more impressively called to mind by the repetition, on the part of their chairman, the Vice-Chancellor Knight Bruce, of a letter in which he who was then no more, evinced his kindly feeling towards their Institution, and stated to them his readiness, a readiness which he believed he fully evinced, to patronise them. Of the other patrons of the Society, numerous as they were, conferring high honour as they did upon that Institution, he would say no more, except to tell them that the toast would be responded to by one present on the right of the Vice-Chancellor Knight Bruce, (Lord Cranworth,) whom they would recognize at once as one of their most esteemed and constant friends. In his presence he could say no more. But the *Solicitor-General* begged, before concluding, to state, if it were only for the gratification of his own feelings, the deep interest which it appeared to him must be felt by them all for the benefit of an institution of that description. The Chairman, he believed, and many others whom he saw around him, had witnessed other distinguished meetings in that Hall. They had seen there its inauguration in the presence of their Sovereign, accompanied by her distinguished consort, whom they had now the honour of enrolling as a Benchet of the Society of Lincoln's Inn. They had seen that Hall on another occasion filled by all those who preside in the various Courts of this

country, ecclesiastical as well as civil, and by those who carry on before them the honorable business of advocates in each of those various Courts. Those were two memorable occasions, which he for one should never forget, being two such occasions as perhaps could scarcely ever in any other country than their own happy, free, and well-ordered country, occasions on which the Sovereign paid a graceful tribute of respect to that society and order of men whose very watchword is "Sui cuique," who by their integrity and honor contributed to promote to the utmost the support of those great pillars upon which all civil society rests, the well ordering of property and the well ordering and government of the nation. Law in itself commands respect for property and respect for order; and upon those two foundations they might say, humanly speaking, civil society is based. Upon those occasions they saw combined all the members of these professions—the judicial profession and the profession of the Bar—in one harmonious intercourse: but he did think that the present occasion was one no less deeply interesting than either of those that preceded it, for they were now met together on a more extended scale of brotherhood: they were there met together combining every rank and order of the profession which they felt it their honour to belong to. They were, he hoped, recognizing that they were met together as disciples of one Master, whose greatest wish and whose order it was that they should imitate Him in relieving the distressed and healing the sick. As they had all of them reason to know, that notwithstanding they were provided for by a higher and a better mind than their own, that yet the ordinary duties of providence or prudence are not dispensed with, and therefore they were wisely combined there in a Society, of which providence for the future is one of the great elements, so also, he trusted, that those who felt they did not stand so much—thus far at all events—in need of that peculiar branch of the Institution, might yet know that there is an universal love which provides for all, yet that that provision is left to be worked out by human means or the foresight of man. He trusted that those who were younger members of the profession, and who might not perhaps belong to the Society, would not fail at once to enrol themselves as patrons of it, and that those who were patrons of the Institution would take the opportunity which would then be afforded them of giving liberal contributions towards this most benevolent object.

Lord Cranworth, in responding to the toast, said, that the objects of the Association had already been so fully and so ably explained, that he was sure they would give him credit for sincerity, when he stated that to have coupled his name with that of the patrons of the Society, he should ever feel as a very distinguished compliment. Sincerely did he regret that he whose station naturally made him looked to as the chief patron of the Society,

was, from the multiplicity of his avocations, unable to be there that day, and to return them thanks on behalf of himself and his fellows. Sure he was that to no member of the profession, high or low, was the interest of a society like the present dearer than to the Lord Chancellor, nor was there anywhere one of whom it might more truly be said, that in all the members of that profession in its honor and welfare, from the highest to the lowest, no man took so lively, and he believed as an individual, so sincere an interest, as the Lord Chancellor. He wished, therefore, that he were there himself to return his thanks: in his absence, however, they must accept them from him, however feebly offered. On any occasion such meetings as those would be most gratifying; but he thought in this year of 1851, it was pre-eminently important that they should assemble to show their attachment to these benevolent objects. Few there present, most likely none, had not visited that which is of European—he might almost say, of world-wide interest—the Great Exhibition. He had often wished that if they could not in some respects compete with those who had sent from other countries to that magic palace monuments of their industry and their art, if they could not present the Amalakites of Russia or the marble forms of ideal beauty which had been sent by Austria and Italy, or if they could not emulate some of the specimens of the productions of their Gallic neighbours, he could not but feel that institutions like that presented an object of moral beauty in which they might proudly challenge comparison with all the world. Marble may perish, but the recollection that we formed one of the many institutions in this country, exhibiting, let me say, the only true model of self-government—societies in which those who are in vigorous health provide for the day of sickness, and those who are in the sunshine of prosperity provide against the probability of a cloudy day, and those who are in such vigour of life that death may appear but a dream at a distance, yet provide against that certain though possibly distant event. He said, when he contemplated societies of that description, he did feel that in this is the real moral excellency of England, and that whatever might be the result of the decision of the juries that were to decide upon the comparative merits of the works of art within those crystal walls, beyond them, at least, we were without rivals in such institutions as that. He ended, therefore, as he began, by saying that he felt proud to have coupled with his name the fact of being a patron of the Institution.

The Secretary then read the lists of subscriptions, which amounted before the conclusion of the meeting to 450*l*.

[To be continued.]

Erratum—At p. 277, col. 2, line 14, for *sic* read *etc*.

PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

NOTICES OF MOTIONS FOR THE NEXT SESSION.

MR. AGLIONBY.—Leave to bring in the bill agreed upon and reported by the Select Committee of this House, for the "Compulsory Enfranchisement of Copyholds."

MR. AGLIONBY.—Bill to Empower Magistrates in Petty Sessions to take the Pleas of persons charged before them with Larceny, and to transmit the Pleas, together with the Depositions, to the next Court of Assize or Quarter Sessions.

MR. ANSTEE.—Bill for causing nominations of persons for the Commission of the Peace to be made by election or presentment of their vicinages, and for qualifying such persons to receive her Majesty's Assignments to such Commission.

MR. SHARMAN CRAWFORD.—Bill to amend the Law of Landlord and Tenant in Ireland.

MR. HEADLAM.—That the present Stamp Duties imposed upon Receipts ought to be remitted.

MR. MULLINGS.—Bill to amend the Stamp Duties Act passed in the last Session of Parliament, so far as relates to the Denoting Stamp required on Duplicates of Deeds, and the *ad valorem* Duty on Assignments of Judgments in Ireland.

MR. MULLINGS.—Bill to make Policies of Assurance Assignable at Law, and to make other provisions in respect thereof.

MR. MULLINGS.—Bill for further remedying a Defect in the Titles of Lands purchased for charitable purposes, and for obviating difficulties as to copyhold or customary lands conveyed for such purposes.

MR. ROCHE.—Bill to reform the Grand Jury Law of Ireland.

MR. ROCHE.—Bill to alter and amend the Irish Poor Law.

MR. ROCHE.—Bill to amend the Law relating to Fairs and Markets in Ireland, and to regulate the sale of all agricultural produce in Cities, Towns, and Counties in Ireland.

MR. ROCHE.—To move a Resolution, That on one day in the week, Irish Bills shall have precedence of all other business.

COLONEL SIBTHORP.—Repeal of the Duties on Fire Insurance.

MR. JOHN BENJAMIN SMITH.—Bill to enable Forty Shilling Freeholders to vote at Elections for Shires in Scotland.

MR. VERNON SMITH.—To move, That this House will resolve itself into a Committee, to consider the Oaths taken by Members of Parliament, with the view of abolishing all Oaths except the Oath of Allegiance.

MR. SOTHERON.—Bill to render perpetual the Act 13 & 14 Vict. c. 115, relating to Friendly Societies.

LORD ROBERT GROSVENOR.—Bill to repeal the

Annual Certificate Duty payable by Attorneys, Solicitors, Proctors, Writers to the Signet and Notaries.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE Managing Committee held their usual monthly meeting on Wednesday, the 5th inst., Mr. E. W. Field in the Chair.

The Secretary reported the position of the various bills before parliament for the Amendment of the Law.

It was referred to the Conveyancing Committee, to consider whether or no it would be expedient to prepare a draft bill for a general registration; and the secretary was instructed to ascertain the views of the Council of the Incorporated Society upon the subject.

It was reported from the Equity Committee, that they had, with the assistance of Mr. Mullings, suggested some amendments in the County Courts further Extension Bill; particularly one, extending the provisions of the audience clause, so as to include, not only suits, but all proceedings in the Courts; and that these amendments had been adopted and introduced into the bill by the Solicitor-General.

It was referred to the Equity Committee, to consider the expediency of preparing draft orders to carry out the objects of the bill; and, if the Committee should see fit, to prepare such orders accordingly.

A letter was read from a member, communicating the opinion of counsel upon the right of Notaries to practise as Conveyancers; which precisely agreed with the opinion which had been communicated to the members by the secretary.

A letter was read from Mr. R. Maughan, stating that the Council of the Incorporated Society concurred with the Committee in the expediency of an application to the Judges for a rule compelling attorneys applying for leave to renew their Certificates, to serve the summons upon the Registrar of Attorneys, instead of, as now, applying *ex parte*; and that they had submitted the proposed amendment to the Judges accordingly.

A case of malpractice was further considered.

Letters were read from members, requesting the opinion of the Committee upon doubtful points of professional duty. The points were discussed, and the secretary was instructed to communicate the opinion expressed.

The secretary was instructed, during the Long Vacation, to visit Lincolnshire, and the Midland Counties; and to hold meetings of the local members of the profession in the principal towns, in order to explain the objects and operation of the Association, and its claims to more extended support.

R. Bedford Rose.

Wm. Stirling, Sec.

RECENT DECISIONS IN THE SUPERIOR COURTS.
AND SHORT NOTES OF CASES.

Lord Chancellor.

Attorney-General v. Birmingham and Oxford Junction Railway Company. July 12, 16, 17, 1851.

RAILWAY COMPANY.—CONSTRUCTION OF BRANCH LINE.—INFORMATION TO ENFORCE CONSTRUCTION OF.—DEMURRER FOR WANT OF EQUITY.

On appeal from, and confirming with costs, the decision of Vice-Chancellor Knight Bruce, demurrers for want of equity were allowed to an information filed by the Attorney-General on behalf of some of the inhabitants of S. for the purpose of compelling a railway company to construct a branch line to S., which they were empowered under their act to make, and to restrain the opening of their main line until such branch had been constructed.

This was an appeal from an order of Vice-Chancellor Knight Bruce allowing, on June 26 last, demurrers for want of equity to this information, which was filed by the Attorney-General at the relation of certain inhabitants of Stratford-on-Avon seeking a declaration that the defendants were bound to complete and open for traffic a branch line from Tillwood to Stratford before they opened their main line, and for an injunction to restrain such opening of their main line. Under the company's act of parliament they were empowered to construct a railway from Oxford to Birmingham with a branch to Stratford-on-Avon, but the formation of this latter line had been abandoned upon the Great Western Railway Company agreeing, in Nov. 1846, to buy up the defendants' line, and also that of the Birmingham, Wolverhampton, and Dudley Railway Company, and construct the whole of the lines.

It was contended that this abandonment was a breach of faith with the public which the Court could redress.

Bacon and W. T. S. Daniel, in support of the appeal; Bethell, Holt, and G. Lake Russell, contra, on the ground the proper remedy was by mandamus on behalf of any shareholder.

The Lord Chancellor said, that the interference of the Attorney-General by information on behalf of the public extended rather to prevent nuisances, or to suppress them when arising from the neglect of parties to do acts which they had undertaken to perform, than to compel the performance of duties which were of a legal nature under an act of parliament, and that in the present case the information sought to restrain the defendants from doing what they were bound to do under their act. The appeal would therefore be dismissed with costs, but his lordship said he would look through the cases in order to give the judgment more in detail.

Vice-Chancellor Knight Bruce dismissed with costs.

—5.—*Warde v. Warde*—Appeal dismissed from Vice-Chancellor Lord Cranworth.

—5.—*Esperie Holt*—Stand over.

—5.—*In re Bagster*—Reference to the Master as to payment of lunatic's allowance.

—5, 7.—*In re Elwes*—Reference to Master in lunacy to approve of committee, with leave to the petitioner to propose himself.

—5, 7.—*In re Hewson*—Order refused for allowance to the nephew of a lunatic of a sum of 200*l.* a year out of her surplus income.

—7.—*Bristow v. Needham*—Appeal dismissed from Vice-Chancellor Knight Bruce.

—7.—*Watts v. Jefferies*—Appeal allowed from Vice-Chancellor Knight Bruce.

—5, 7.—*Zulueta v. Vincent*—Part heard.

Master of the Rolls.

Irwin v. Dimes and others. July 21, 22, 1851.

MARRIAGE ARTICLES.—COVENANT FOR SETTLEMENT OF AFTER ACQUIRED PROPERTY.—SETTING ASIDE MORTGAGE-DEEDS, &c.

By articles entered into previous to marriage it was provided that a settlement should be made of all the property to which the lady was then or might thereafter become entitled upon her for life, and then for her husband for life, and afterwards for the issue of the marriage, and it was also agreed that the settlement should contain a covenant by the husband to settle on like trusts any property to which he or his wife should thereafter become entitled. The husband afterwards became entitled to certain estates in Ireland, which he mortgaged to defendant D., who induced the wife to execute deeds of confirmation thereof. Upon a suit instituted by the wife, by her next friend, the three deeds were declared void as against her and those claiming under the articles, except the husband and persons claiming under him, and were ordered to be delivered up to be cancelled.

This bill was filed by Mrs. Elizabeth Irwin, who sued by her next friend, for a declaration that a certain mortgage-deed, dated 31st Aug. 1847, and two other deeds executed by the plaintiff on 22nd Jan. 1848, confirming the same, were fraudulent and void as against the plaintiff and trustees of her marriage settlement, and that the defendants might be ordered to deliver them up to be cancelled. It appeared that upon the plaintiff's marriage with defendant, James Brooke Irwin, articles dated 29th June, 1843, had been executed, providing for a settlement of all the property, to which she was then, or might thereafter become entitled, in trust for her for life, and then for her husband for life, and then for the issue of the marriage, and that the settlement should also contain a covenant by the husband for the set-

Aug. 5.—*Glyn v. Goddard*—Appeal from

element upon like trusts of all the property to which he or his wife should thereafter become entitled. Mr. Irwin had, subsequently to the marriage, become entitled to certain property in Ireland, and upon his taking the benefit of the Insolvent Debtors' Act, the plaintiff proceeded to enforce the marriage articles against the assignee in insolvency. Mr. Dimes having executed a mortgage to defendant, William Dimes, on the Irish property, and the plaintiff having been induced to execute a deed of confirmation of the same, this suit was instituted.

Roundell Palmer and Beales, for the plaintiff; *Willcock and Wilkins*, for the defendant Dimes.

The Master of the Rolls declared the mortgage-deed of 31st Aug. 1847, and also the deeds of confirmation of 22nd Jan. 1848, void as against the plaintiff and those claiming under the articles, other than Mr. Irwin and any persons claiming through or under him, and ordered the same to be cancelled.

Aug. 5.—*McDonald v. Walker*—Judgment on special case under the 13 & 14 Vict. c. 60.

—6.—*In re Cutler's Trust*—Direction for settlement of fund on wife of insolvent.

—6.—*Laurie v. Clutton*—Judgment as to effect of appointment.

—6.—*Newhall v. Wetherhay*—Injunction granted to restrain infringement of patent.

—6.—*Butcher v. Butcher*—Judgment herein

—5, 6, 7.—*Joddrell v. Joddrell*—Cur. ad. vult.

—7.—*Armstrong v. Storer*—Judgment in administration suit.

—7.—*Duke of Devonshire and others v. Elgin*—Reference to the Master as to compensation for use of defendants land for passage of water.

—7.—*Early v. Storrer*—Judgment on claim filed for payment of legacy.

—5, 8.—*Rowley v. Adams*—Petition dismissed with costs.

—8.—*Ellis v. Beaumont*—Stand over.

—8.—*Patent Fuel Company v. Walsab*—Injunction continued to restrain action at law.

Vice-Chancellor Knight Bruce.

Esparte Brown, in re Brown. June 25, 1851.

BANKRUPT. — CERTIFICATE. — CAPITAL. — DEFECTIVE BOOKS.

On appeal from the decision of Mr. Commissioner Goulburn a second class certificate was granted to a trader who had begun business as a wine and spirit merchant, where a capital of 200l. with which he began was provided by his uncle, and where the defective state of his books, since 1848, was caused by his being deprived of the use of his sight through a disorder in his eyes, there being no imputation of any dishonesty, meanness, or falsehood.

THIS was an appeal from the decision of Mr. Commissioner Goulburn, who had granted the bankrupt, a wine and spirit merchant at Norwich, a third class certificate only. It appeared

that, although when the bankrupt had commenced business he had no capital of his own, his uncle had given him 200l. to begin with, and that the defective state of his books, since 1848, had arisen from the bankrupt being deprived of sight through a disorder in his eyes.

Swanston and J. Morgan, for the bankrupt, in support of the petition; *Lucas*, for the assignees, did not oppose.

The Vice-Chancellor said, that as no dishonesty, meanness, or falsehood had been imputed to the bankrupt, a certificate of the second class would be granted,—the costs of the assignees to come out of the estate.

Aug. 5.—*Harvey v. Hubbard*—Order for appropriation of charity fund *cy pres*.

—6.—*Jones v. Jennings*—Order as to receipt of moneys, and motion to discharge injunction stand over.

—6.—*Boosey v. James*—Injunction granted to restrain infringement of copyright.

—7.—*Perry v. Fothergill*—Order in administration claim.

—7.—*Erparte* ———— Order of allowance for maintenance of infant

—9.—*Esparte O'Connor, in re National Land Company*—Order for winding up.

Vice-Chancellor Lord Cranworth.

Prescott v. Wood. July 2, 1851.

WILL.—TESTAMENTARY GUARDIANS.—DISCLAIMER.—INFANTS.

By his will, the testator appointed W. together with T., guardians of his two infant children during their respective minorities. T. disclaimed and W. alone appointed his own solicitor steward of a manor: Held, that W. became sole guardian, and in the absence of any circumstances being shown that the appointment was inconsistent with the interests of the infant, the Court refused to declare such act was invalid.

THE testator, Sir Geo. Prescott, by his will, dated 23rd April, 1850, during his residence at Caen, in France, after declaring that he made the same "for the sole and only purpose of naming guardians for my infant children, and for no other purpose whatsoever," appointed "the Rev James Wood, the British Minister in charge of this place, together with Robert Michael Tolner, the brother of my wife, guardians of my two infant children, during their respective minorities." It appeared that a receiver had been appointed of the rents of the estates in this suit, and that Mr. Tolner having disclaimed, the defendant had appointed his solicitor as steward of the manor. This petition was now presented for a declaration, that the defendant was guardian jointly with Mr. Tolner, and not otherwise, to take the accounts and for the allowance of proper maintenance.

Bethell and Giffard, in support of the petition, which was opposed by *Rolt and G. Lake Russell*.

The Vice-Chancellor said, that the will created a joint tenancy in the guardianship, which

might be put an end to, either by death or disclaimer, and the surviving or continuing guardian became the sole guardian. As, therefore, there was no circumstances disclosed in the petition to show that the appointment complained of was not perfectly consistent with the interests of the infants, the order would be only for an account and allowance of maintenance.

Aug. 5.—*In re London and Birmingham Extension, Northampton and Daventry Railway Company, Blyth v. Carpenter*—Order on Master to entertain claim of official manager against estate of testator.

— 5.—*Gomer v. Moore*—Judgment on further directions.

— 6.—*Rochdale Canal Company v. King and others*—Motion refused for Injunction with costs reserved.

— 7.—*Egerton v. Brownlow*—Order for allowance by receiver with approbation of Master of sums to charities.

— 8.—*Villamill v. Villamill*—Order on petition for payment of fund out of Court on ward attaining her majority.

— 8.—*In re Trinity House, Kingston-upon-Hull*—Reference to the Master as to diminishing of tolls levied on shipping in support of charity.

— 8.—*Parker v. Parker*—Order on petition of tenant for life for reference to the Master to approve of lease of house.

— 8.—*Rawlins v. M'Mahon*—Bill dismissed with costs.

Vice-Chancellor Turner.

Eccles v. Cheyne. July 16, 1851.

CLAIM.—APPOINTMENT OF NEW TRUSTEES.—CHARGE OF MISCONDUCT, WILFUL NEGLIGENCE, AND DEFAULT.—ADMINISTRATION ACCOUNTS.

So much of a claim filed under the orders of April, 1850, as related to the appointment of new trustees and charging the existing trustees with misconduct, wilful neglect, and default, was dismissed with costs, although at the hearing the plaintiff waived the relief in respect of that part of the claim; and the Court, upon an amendment being made, stating that the plaintiff, who sued as the administrator of the settlor's daughter interested in the trust-funds under the settlement, was one of the children of the daughter, directed inquiries as to the parties interested, and on their being summoned before the Master for the usual administration accounts.

This claim was filed under the orders of April, 1850, on behalf of the administrator of the settlor's daughter, who was interested in the trust-funds under the settlement, seeking the appointment of new trustees, charging one of the existing trustees with misconduct, and the other with wilful neglect and default, in administering the trusts, and for an account.

Roll and W. T. S. Daniel, in support, said the relief asked as to the misconduct, wilful neglect, and default of the trustees, was not insisted on, as it was doubtful whether, in the absence of the other parties interested under the settlement, it was the subject of a claim, and sought the common administration accounts, and execution of the trusts under the direction of the Court.

Mahns and Collins, for the trustees, contended the claim should be dismissed with costs, with leave to file a bill.

The Vice-Chancellor said, the orders of April, 1850, were intended to prevent the inconvenience and expense of bringing before the Court, in the first instance, all the parties interested, where they were numerous, by bill, as was shown by the 7th & 8th of the orders. The orders, therefore, were meant to apply to cases in which, in the absence of all parties interested, a decree would have been as of course. The claim must accordingly be dismissed with costs so far as related to the appointment of new trustees and the charges of wilful neglect, default, and misconduct; but upon the plaintiff amending, by stating he was one of the children of the daughter, a decree for a reference would be directed to inquire and ascertain the parties interested, and upon such parties being summoned before the Master, the accounts should be taken of the property comprised in the settlement and received by the trustees.

Aug. 5.—*Trustees of Lee River Navigation v. New River Company*—Order by consent.

— 5, 6.—*Morrison v. Moat*—Cur. ad. vult.

— 6.—*Leslie v. Thompson*—Judgment on special case under 13 & 14 Vict. c. 60.

— 6.—*Caldwell v. Malcolmson*—Leave to serve notice of motion for injunction to restrain infringement of patent.

— 7.—*London and North Western Railway Company v. Birmingham and Oxford Junction Railway Company*—Order by consent.

— 7.—*Oakes v. Oakes*—Stand over.

— 8.—*Attorney-General v. Burgess and Commonalty of Sheffield*—Judgment on information.

Court of Queen's Bench:

Regina v. Borton and others. June 14, 1851

LOCAL IMPROVEMENT ACT.—PAVING FOOTPATH.—"HOUSE."

Under the *Leamington Improvement Act*, 6 Geo. 4, c. cxxxiii., the Commissioners appointed thereunder, were empowered by sec. 33, to pave the footpath in front of all houses, buildings, lands, and premises, and to recover the costs and charges of the same from the tenant or occupier thereof by distress before justices, but by sec. 36, where there was a greater space than 30 yards from house to house, on the same side of the street, they were to lay down gravel, and the expense was to be paid out of the general rate: Held, that the word "house" in sec. 36, included stables, and there not consequent

quently being a square of 30 yards, a rule was made absolute on the justices to issue their warrant of distress on the occupier for the rate.

THIS was a rule nisi on the defendants to issue their warrant of distress against a Mr. Woodhouse, for the amount of a paving-rate, under the Leamington Improvement Act, (6 Geo. 4, c. cxxxiii.) By sec. 33 of that act, the Commissioners thereunder appointed are "authorized and required well and effectually to pave and flag, or cause to be paved and flagged, the present and all future footpaths or footways as far as the carriage road, and including the gutter next adjoining to any square, parade, street, lane, or other public passage or place within the limits of the said town," "and the costs and charges of such paving," &c. "shall be paid and payable by the respective tenants or occupiers of the houses, buildings, lands, and premises against or next to or adjoining," "to be recoverable by distress," &c., subject to the provisions in sec. 38, that wherever "there shall be a greater distance than 30 yards from house to house on the same side of the street," &c. the Commissioners were only to put down gravel sand, or other materials in that space, "and to pay the expenses thereof" out of the general rate. It appeared that a space had been paved in front of the offices and garden of Mr. Woodhouse, whose house, not including the stables, was more than 30 yards from the next house.

Mr. Smith showed cause against the rule.

The Court, without calling on Hayes, in support, held, that the word "house" included the stables, and made the rule absolute accordingly.

Court of Common Pleas.

Thompson v. Haworth. June 18, 1851.

SAVINGS' BANK.—PRIORITY OF TRUSTEES IN ADMINISTRATION OF ASSETS OF ACTUARY AGAINST OTHER CREDITORS.

Held, that the trustees of a savings' bank were entitled to priority in the administration of the assets of their actuary under the 3 & 4 W. 4, c. 14, s. 28, in respect of moneys belonging to the depositors received by him; although such moneys had been received by him not strictly in conformity with his appointment at the bank, where they had been received by him in consequence of his office. And on a special case the Court directed judgment to be entered for the defendant; who was his administratrix, in an action brought against her by one of the creditors.

THIS was an action of assumpsit against the defendant as executrix of Geo. Haworth, deceased, upon three bills of exchange for £11. 1s. 6d., 817l. 10s., and 500l., drawn by the plaintiff, James Thompson, on, and accepted by, the testator, and for goods sold and delivered; to which the defendant pleaded that the deceased was actuary of a savings' bank for

the receipt of deposits under the 5 Geo. 4, c. 92; 3 & 4 W. 4, c. 14; and 7 & 8 Vict. c. 83, and that at the time of his death, in 1849, he had in his hands as such actuary certain moneys of the depositors, and that she had fully administered to the estate, which was insufficient to satisfy the moneys due to the bank. The plaintiff replied, setting out the rules and regulations of the bank, and that the deceased had received the moneys at his own offices in Rochdale, where he carried on the business of a land agent and collector of rents, and that the treasurer and trustees of the bank had never attended at the bank. The matter now came on in the form of a special case for the opinion of the Court whether the claim of the trustees of the bank was entitled to priority in the administration to the plaintiff's debt under the 3 & 4 W. 4, c. 14, s. 28, which provides that "if any person already appointed under the provisions of the" 4 Geo. 4, s. 92, "or who may hereafter be appointed to any office in a savings' bank, or in a society established under this act; and being entrusted with the keeping of the accounts, or having in his hands or possession, by virtue of his said office or employment, any moneys or effects belonging to such savings' bank or society; or any deeds or securities relating to the same, shall die, or become a bankrupt, or insolvent," "his executors, administrators, or assignees, or other persons having legal right," "shall, within 40 days after demand made by two of the trustees of the said savings' bank or society as aforesaid, deliver and pay over all moneys and other things belonging to such savings' bank or society to such person as the said trustees shall appoint, and shall pay out of the estates, assets, or effects of such person, all sums of money remaining due which such person received by virtue of his said office or employment, before any other of his debts are paid or satisfied."

Cowling, for the plaintiff; Crompton, for the defendant, was not called on.

The Court said, that as the deceased was employed to transact the business of the bank, and had received the money by virtue of his employment: within the 3 & 4 W. 4, c. 14, s. 28, the depositors of the bank were entitled to priority to the plaintiff, and that the judgment must be for the defendant.

Court of Exchequer.

Coe v. Platt and others. June 25; 27, 1851.

FACTORY ACTS.—COMPENSATION FOR INJURIES.—FENCING OFF ENGINE.—DECLARATION, SUFFICIENCY OF.

A declaration in an action on the case brought to recover compensation for injuries sustained by the plaintiff in the defendant's factory in consequence of their neglect to fence off the machinery under the 3 & 4 W. 4, c. 103, and the 7 & 8 Vict. c. 15, should contain an allegation that the machinery was in motion for the purpose of the business of the factory, and on the

omission of such an allegation, judgment was arrested.

Held, also, that the liability of the mill-owner is not limited to the classes for whose benefit the acts were passed, namely, "children and young persons under 16," but that his liability arose if, while the engine was at work for the purposes of the mill, no such fence was provided and any one was injured.

THIS was a rule nisi for a new trial on the ground of misdirection, and to arrest the judgment for the plaintiff on the ground of the declaration disclosing no good cause of action. The action was brought on the case by the plaintiff by her next friend in *forma pauperis* against the defendants, mill-owners, for negligently omitting to fence off the shaft of the mill engine in their factory in which she was employed as a piecer and to sweep up the room where the machinery was placed during the absence through illness of one of the women, whereby she came in contact with the engine shaft and was seriously injured. The defendants pleaded *inter alia* that the plaintiff was herself guilty of negligence, and denied that she was lawfully in the mill. It appeared on the trial before Mr. Baron Platt; at the last Yorkshire Assizes, that the plaintiff, who was of the age of 16, had gone to the mill with the consent of the inspector to supply the place of one of the women, and had been directed by the overlooker to sweep the floor of the engine room, in doing which the accident happened. The declaration alleged that it was the defendants' duty as mill-owners, under the 3 & 4 W. 4, c. 103, and the 7 & 8 Vict. c. 15, to see that the machinery was properly fenced off, and that there being no such fence to the shaft on the day in question, they were liable under the statute. The learned baron left it to the jury to say whether the plaintiff was lawfully present, and to assess the damages, and they returned a verdict with 120*l.* damages.

Knowles and Atherton showed cause against the rule, which was supported by *Wilkins, S. L., and Hugh Hill*, on the ground that the plaintiff, being above 16, could not maintain an action under the statute, and that the declaration was defective in not stating that the machinery was in motion for the purposes of the mill.

The Court said, that the jury had been properly directed, and were justified by the evidence in finding that the plaintiff was lawfully present, and she would therefore be entitled to retain the verdict on that issue. The liability of the mill-owner was not limited to the classes for whose benefit the acts were passed, namely, "children and young persons under 16," as his liability arose upon his neglect of his duty to fence off the machinery. The declaration, however, should have contained an allegation to bring the defendants clearly and technically within the provisions of the statute, which only compelled them to fence off the machinery when at work for the purposes of business, and judgment must be arrested.

Court of Exchequer Chamber.

Turner v. Liverpool Dock Company. May 20, 1851.

BILL OF LADING.—DELIVERY OF CARGO WHEN COMPLETE.—RESERVATION OF RIGHT AS UNPAID VENDORS.

Merchants at L. having directed Messrs. M. & Co. at C. to purchase for them and ship cotton, &c. on board certain vessels of which they were owners, Messrs. M. & Co. purchased accordingly, and signed bills of lading to themselves or their assigns, and sent invoices to the merchants at L., on whom they drew bills. Before the delivery of the goods Messrs. M. & Co. directed that the cargoes should not be delivered until the bills were duly honoured; and upon the merchants at L. becoming bankrupts the goods were detained by the defendants; the trustees of a dock company, whereupon the bankrupts' assignee brought an action for the goods: Held, overruling a bill of exceptions to the ruling of the judge at the trial, that the defendants were entitled to judgment, the delivery not being complete until the bills were duly honoured.

THIS action was brought by the plaintiff as assignee of Messrs. Martin, Higginson, & Co., merchants, of Liverpool, who had become bankrupts, against the trustees of the Liverpool Dock Company to recover certain cotton and other goods which had been shipped on board the *Charlotte* and another vessel, of which the bankrupts had been owners. It appeared that the bankrupts had, in August, 1847, directed Messrs. Maudlove & Co., of Charleston, to purchase for them and ship cotton on board the *Charlotte* which reached Charleston on September 19, and that Messrs. Maudlove had purchased accordingly, and on October 12 signed bills of lading to themselves or their assigns, sending invoices to the bankrupts on whom they also drew bills; but before the delivery of the goods they directed that the cargoes should not be delivered to the bankrupts unless the bills were honoured, and upon their becoming bankrupt the cargoes were accordingly detained by the defendants. Upon the trial it was contended on behalf of the plaintiff that the delivery on board the bankrupts' vessels amounted to a delivery to them; and it was urged for the defendants that the possession in the goods had never been parted with, but was retained until the bills had been duly honoured. The learned judge who presided having ruled in the defendant's favour, a bill of exceptions was tendered and accepted and now came on for hearing.

The Court, after taking time to consider, held, that Messrs. Maudlove & Co. had not divested themselves of the property in the goods, but had preserved their right as unpaid vendors, and directed judgment for the defendants in error.

Sist Prius.

(Coram Mr. Baron Martin.)

Bellamy and another v. Majoribanks and others.

June 26, 27, 1851.

BANKER AND CUSTOMER. — CROSSED CHEQUE. — PAYMENT OF

Quære, whether bankers are entitled to pay a cheque in favour of G. or bearer, which has been crossed by the drawers, to be paid through a particular bank, to G.'s bankers, whose names had been substituted by G., and the bank specified by the drawers erased.

THIS action was brought to recover the amount of a cheque: dated 25th June 1845, drawn on the defendants, Messrs. Coutts and Co., in favour of Edward Bryant Garey or bearer, for 2,596l. 17s. by the plaintiffs, and crossed "Bank of England." For the account of the Accountant-General, and which it appeared the defendants had paid, contrary, as

was alleged in the declaration, to the custom and usage of bankers, to Garey's private bankers, Messrs. Gooling & Co., whose names he had substituted for the plaintiff's endorsement; to which the defendants pleaded, denying such custom and usage of bankers.

Attorney-General, Knowles and Unthank, for the plaintiffs; *Sir F. Thesiger, Channell, S. L., and Sir John Bayley*, for the defendants.

The Court said, that if the jury were of opinion it was not the defendants' duty to pay only to the Bank of England, the defendants were entitled to a verdict, but that if the jury should be of opinion the defendants ought to have paid the cheque, in pursuance of the plaintiff's special indorsement, their verdict must be for the plaintiffs.

The jury having found that it was the duty of the defendants not to pay, otherwise than to the Bank of England, a verdict was entered for the plaintiffs.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.**EVIDENCE.**

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lunacy, p. 147.

Courts of Equity :

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, pp. 204, 246, 265.

Law relating to Trustees, p. 285.]

ACCOUNTS.

Examination of witness as to matters of account before hearing.—Where the right or liability to account is in question in a cause and not particular items of account, it would be improper for the purpose of the hearing to examine witnesses upon particular items not specially charged in the pleadings to be erroneous; and, therefore, in such a case, and as an exception to the general rule, the depositions of a witness examined *de bene esse* as to particular items might be published after the hearing of the cause, although such witness might have been and had not been examined in the regular way before publication passed—*semble*. *Forryth v. Ellice*, 2 M'N. & G. 209.

ADMISSIONS.

Service of subpoena.—*Letter admitting receipt of copy.*—*Held*, that a letter from a defendant, admitting the receipt of a copy of a subpoena, was not sufficient evidence that he had been served, for the purpose of entitling the plaintiff to enter an appearance for him;

although all attempts to serve him personally had failed, and there was reason to believe he kept out of the way to avoid service. *Gathercole v. Wilkinson*, 1 De G. & S. 681.

AFFIDAVIT.

Proof of document.—Proof admitted on behalf of the plaintiff, of the execution of a deed by affidavit at the hearing, where the answer had not been replied to, but did not deny the execution. *Chalk v. Raine*, 7 Hare, 393.

Case cited in the judgment: *Rowland v. Sturgis*, 2 Hare, 520.

See *Credit of Witness*, 1.

ALIENDE EVIDENCE.

Defendant's Letter.—A plaintiff, by her bill alleged, that an agreement to take a house had been entered into by the defendant and charged, that, though no formal note thereof was ever made, yet, that the same was proved and made out of the letters of the defendant and his agent, and that such letters were a sufficient note thereof. A letter of the defendant's was proved, containing an agreement to take the house, and "give 50l. more of premium," "provided I get the profit rent of the present tenant." Upon evidence aliunde, showing what, in fact, these words meant, specified performance was decreed. *Skinner v. McDonall*, 2 De G. & S. 265.

ANSWERING DIRECT QUESTIONS.

The Court will, in many cases, compel a defendant to answer direct questions, the answer to which the Court may be less ready to allow a plaintiff to seek by examining the papers of his opponent. *Attorney-General v. Thompson*, 8 Hare, 116.

CREDIT OF WITNESS.

1. *After publication.*—*Affidavit by another case.*—Motion, after publication, to prove an

admitted in another cause made by a witness examined in this, and tending to discredit him, refused. *Gregory v. Marychurch*, 12 Beav. 275.

2. Testimony, when admissible.—A witness to credit deposed, that he believed the principal witness to be unworthy of belief, on account of a particular transaction, which he detailed: Held, that the assignment of a reason for the belief was insufficient ground for suppressing more of the deposition than related to the reason assigned. The same witness spoke to a conversation, in which the principal witness had given an account of a fact material to the issue, at variance with his testimony; the Court refused to suppress the deposition, although the principal witness had not been cross-examined as to this. *Penny v. Watts*, 2 De G. & S. 501.

Case cited in the judgment: *Harvey v. Mount*, 7 Beav. 520.

3. Publication of deposition.—Witness going out of jurisdiction.—Issues having been directed on the appeal, and one of the witnesses to credit having gone out of the jurisdiction, the Court ordered publication to pass of his deposition. *Penny v. Watts*, 2 De G. & S. 501.

CRIMINATING WITNESS.

A defendant or witness, if interrogated as to matters tending to criminate him, may decline to answer at any time, notwithstanding what he has disclosed, may be sufficient to convict him. The decision in *Ewin v. Osbaldiston*, 6 Sim. 608, disapproved of. *King of the Two Sicilies v. Wilcox*, 1 Sim. N. S. 301.

CROSS-EXAMINATION.

Before the Master.—A witness examined before the decree for the defendant, was by order examined before the Master under the decree for the plaintiff, *viâd voce*: Held, that the defendant might cross-examine him without an order. *Phelps v. Prothero*, 2 De G. & S. 274.

DEPOSITIONS.

1. De bene esse.—Publication.—Where a person whose depositions have been taken *de bene esse* might have been, but was not, examined between the time when the cause was at issue and the time when publication passed, publication of these depositions will not be allowed.

In a bill for an account, depositions were taken *de bene esse* as to the correctness of entries in partnership books, but they were not published before the decree. An application to have them published afterwards, in order that they might be used in the Master's office, was refused. *Forsyth v. Ellice*, 2 H. & T. 424; 2 M'N. & G. 209.

Case cited in the judgment: *Smith v. Arthur*, 11 Ves. 364.

See *Examination, de bene esse*.

2. Motion to suppress.—Witnesses were examined for a defendant under a commission in the country. Twenty days after publication, the plaintiff served a notice of motion to sup-

press the depositions, because no notice of the names, &c., of the witnesses had been given to her. Motion refused on account of the delay in serving the notice, and because the plaintiff's solicitor was present during the execution of the commission, at the inn at which it was executed, knew what was taking place, and saw and conversed with the witnesses. *Smith v. Pincombe*, 16 Sim. 497.

See *Re-examination*.

DOCUMENTS, PRODUCTION OF.

See *Production of Documents*.

ENTRY IN SOLICITOR'S CLERK'S DIARY.

An entry in the diary of a solicitor's clerk who had become lunatic not allowed to be read in evidence of a matter concerning which it was not the duty of the clerk to have made such entry. *Coleman v. Mellersh*, 2 M'N. & G. 309.

EXAMINING CO-DEFENDANT.

An order giving a defendant liberty to examine a co-defendant as a witness, need not be served on the plaintiff. *Smith v. Pincombe*, 16 Sim. 497.

EXAMINATION DE BENE ESSE.

Time of publication.—*Inquiry before Master.*—The evidence of a witness taken *de bene esse* before a cause is at issue, and not published before the hearing, may be published after the hearing, for the purpose of being used on a question referred to the Master, if the witness cannot then be examined. *Forsyth v. Ellice*, 7 Hare, 290.

EXAMINATION AFTER PUBLICATION.

After publication, the plaintiff discovered material evidence: leave given, upon motion, to examine witnesses to prove it. *Gregory v. Marychurch*, 12 Beav. 275.

ISSUE.

Saving just exceptions.—In an order directing an issue, with liberty for the parties to read at the trial evidence taken *viâd voce* before the Master, it is proper to insert "saving all just exceptions." *Turner v. Maule*, 2 De G. & S. 209.

INTERLOCUTORY APPLICATIONS.

Disputed points.—*Production of document.*—On interlocutory applications, which are necessarily heard upon affidavits, the Court does not dispense with the rule that, on disputed points, the best evidence in the power of the parties must be given; and therefore, it is not sufficient for a party to state upon affidavit, the purport and effect of a document which he has the means of producing. *Stamps v. Birmingham, Wolverhampton, and Stour Valley Railway Company*, 7 Hare, 255.

LEADING INTERROGATORIES.

Reservation of objection to the hearing.—Interrogatories for the examination of witnesses held not leading, but the Court reserved to the defendant the right to object to the depositions

at the hearing. *Gregory v. Marychurch*, 12 Beav. 398.

PARTIES' ACTS.

After contract.—Acts or communications of the parties after an agreement may be evidence of facts existing at the time of the agreement material to its construction, but not to determine its meaning. *Morro v. Taylor*, 8 Hare, 56.

PARTNERSHIP.

Entries in books.—Entries in the books of a partnership are as conclusive of the rights of the partners, as if they had been found prescribed in a regular contract. *Stewart v. Forbes*, 1 H. & T. 461.

PUBLICATION OF DEPOSITIONS.

Appeal from dismissal of bill.—Pendency of an appeal from the dismissal of the bill by the Vice Chancellor, held insufficient ground for directing publication to pass of the depositions as to credit, for the purpose of their being used upon the appeal. *Penny v. Watts*, 2 De G. & S. 501.

See *Credit of Witness*, 3 ; *Depositions*, 1.

RE-EXAMINATION.

1. Leave given, under the circumstances of the case, to examine a witness before the Master, after the decree, as to a matter with regard to which he had been examined before the decree. *Duke of Leeds v. Lord Amherst*, 16 Sim. 431.

2. *Mistake in depositions.*—*Suppression.*—Upon the motion by a defendant to suppress depositions supported by the affidavit of a witness, that the evidence which she gave before the Commissioner, was not truly represented in the depositions, and that she had mistaken the meaning of a technical expression used in the interrogatories, the Court refused to suppress the depositions, but gave the parties liberty to re-examine and cross-examine the witness *vid voce* before the Master, (the commission being issued after decree,) upon the disputed parts of the depositions; and also gave the plaintiff liberty in the same manner to examine, and the defendant to cross-examine, the Commissioner and his clerk. *Dobson v. Land*, 7 Hare, 296.

SIGNATURE OF WITNESS.

To engrossment of deposition.—Where the Commissioner for the examination of witnesses omitted to copy on the engrossment of the depositions the signatures which the witnesses had affixed to the drafts, a motion to suppress the depositions on this ground was refused, and the Clerk of Records and Writs was directed to supply the omission. *Lee v. Egremont*, 2 De G. & S. 363.

STAMP.

Receipt improperly stamped.—A receipt not having a proper stamp, cannot be used as evidence of a matter collateral to the payment of the money.

Thus, in a case where it was sought to prove an agreement for purchase by means of a re-

ceipt for the purchase-money, such receipt not being properly stamped : *Held*, that the evidence could not be admitted. *Evans v. Prothero*, 2 M.N. & G. 319.

SUPPRESSION OF DEPOSITIONS.

Where witnesses were examined during the abatement of a suit occasioned by the death of parties, the depositions of those who did not at the time of their examination know of the death of the parties which had caused the abatement, were received, and the depositions of those who did know such facts were suppressed. *Curtis v. Falbrook*, 8 Hare, 29.

USAGE.

Jurisdiction of Court.—*Charitable trust.*—It is not necessary, in order that the Court may be enabled to enforce a trust for a certain congregation of Dissenters, that the trust should be declared by any deed or writing; the Court may ascertain, from the evidence of usage or otherwise, the particular trusts to which the property is dedicated. *Attorney-General v. Murdoch*, 7 Hare, 445.

VIEW.

Inspection of mines.—*Colliery lease.*—Order upon motion before the hearing, that the plaintiffs and their witnesses should be allowed, until publication, to view and inspect the workings by the defendants in the plaintiffs' mine, of which the defendants were lessees, and which mine was entered and worked by means of a shaft in an adjoining mine belonging to the defendants. *Lewis v. Marsh*, 8 Hare, 97.

VIVA VOCE EXAMINATION.

1. *Same matter as before examined, and generally.*—A witness deposed to having made a copy of a lost bond, and produced a copy, but omitted to indemnify it as that which he had made. By the decree, inquiries were directed, among others, as to the circumstances relating to the bond, and whether any debt remained due thereupon :—

Held, first, that it was not fit to insert any direction in the decree, that the witness should be examined before the Master as to the matters included in his first examination; but that a distinct application ought to be made for such an order.

Held, secondly, upon motion subsequently made by the plaintiff to the Court, that the case was a proper one for an order for the witness to be examined *vid voce* to the same matters as to which he had been before examined, and generally. *Stooke v. Vincent*, 1 De G. & S. 705.

2. *Defendant.*—Neither the 69th Order of April, 1848, nor 6 & 7 Vict. c. 85, nor both, authorize the Court to give a plaintiff liberty to examine *vid voce* a sole defendant in the prosecution of inquiries under a decree. *Phelps v. Prothero*, 2 De G. & S. 274.

[Numerous Cases on PRIVILEGED COMMUNICATIONS and PRODUCTION OF DOCUMENTS will be included in the next number.]

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, AUGUST 23, 1851.  
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THE LAW OF EVIDENCE AMENDMENT ACT.

THE act 14 & 15 Vict. c. 99, by which an important modification of the Law of Evidence has been effected, is printed without abbreviation in our last number, (*ante*, p. 292). It is expressly provided, that the act is to come into operation on the 1st day of November in the present year, and as actions already commenced and now depending are not excluded from its operation, it becomes desirable to ascertain, with precision and exactness, and without any unnecessary delay, the nature and extent of the alterations introduced by its provisions into the law and practice of our Courts of Justice.

The principle involved in the main provision of the act, rendering the parties directly interested competent and compellable to give evidence, upon which so much difference of opinion existed, having now been affirmed by the legislature, the discussion upon this part of the subject may be considered, for the present at least, as having closed, and it cannot be re-opened with any immediate practical advantage. The question has ceased to be, what it is safe or expedient to do. The more profitable inquiry for men of business is, what has the legislature done? In what terms and to what effect are its intentions manifested?

Proposing, from time to time, to examine and consider the several acts passed during the Session of 1851,—in this spirit and with this view, we commence with the Act “to amend the Law of Evidence.”

A doubt is already suggested as to the construction of the act, in reference to the examination of the husbands and wives of litigant parties in civil cases—a matter of grave importance, frequently and warmly discussed during the progress of the bill in

parliament—and in respect to which it was universally supposed that the amendment of the Commons’ Committee had been deliberately rejected by the House of Peers. To the astonishment of those who take a watchful interest in such matters, it appears, however, that the act, as it has come from the hands of the Queen’s printer, so far as it affects this question, is copied without alteration from the bill as amended in the Commons’ Committee and ordered by that house to be printed on the 22nd July last.

The doubt which arises as to the intention of the legislature in rendering a wife competent or compellable to give evidence against her husband, or a husband against his wife, in *civil* cases, originated in changes made in the bill in the lower house. The bill, as it left the House of Lords, expressly provided, that neither in civil nor criminal proceedings should a husband be competent or compellable to give evidence for or against his wife, or a wife for or against her husband. To determine the question of construction arising upon the recent statute it is necessary to advert to the state of the law anterior to its passing.

As our readers are, for the most part, aware, the act 6 & 7 Vict. c. 85, (popularly known as Lord Denman’s Act,) declared, that no person offered as a witness should thereafter be excluded from giving evidence by reason of incapacity from crime or interest, but that every person so offered should be admitted to give evidence although such person may have an interest in the matter in question or may have been previously convicted of any offence; but this enactment was limited by a proviso, to the effect, that the act should not render competent the parties to the record, or any person in whose immediate and individual behalf any action may be brought or de-

defended, either wholly or in part, or the husbands or wives of such persons respectively.

The act which has recently obtained the Royal Assent, repeals so much of the 6 & 7 Vict. c. 85, s. 1, as provides that the last-mentioned act "shall not render competent any party to any suit, action, or proceeding individually named in the record, or any lessor of the plaintiff, or tenant of premises sought to be recovered in ejectment, or the landlord or other person in whose right any defendant in replevin may make cognizance, or any person in whose immediate and individual behalf any action may be brought either wholly or in part;" but the words immediately following those cited, and which complete the proviso in Lord Denman's Act, (*i. e.*) "or the husbands or wives of such persons respectively," are omitted from the repealing clause in the act 14 & 15 Vict. c. 99.

Although not expressly repealed, however, it seems to be at least questionable, whether there is not a constructive repeal of these words so far as regards civil proceedings. The 2nd clause of the new act is as follows:—

"On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding, in any Court of Justice, or before any person having by law or by consent of parties, authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf the suit, action, or other proceeding may be brought or defended, shall, except as herein-after excepted, be competent and compellable to give evidence, either *visâ voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding."

By this section the persons and parties in whose behalf the proceeding may be brought or defended, are clearly within the operation of the act unless specially excepted, but it will be observed that "the husbands or wives of such persons respectively" are not referred to. But then comes the 3rd sect., in which the husband and wife is expressly excepted from the operation of the act in all criminal proceedings; but the exception is not extended to civil proceedings. The 3rd sect. is in these words:—

"But nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall in any civil proceeding render any person

compellable to answer any question tending to criminate himself or herself, or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband."

It is extremely probable, that the person who shaped the section in this form intended to establish a distinction between civil and criminal proceedings, and conceived, that by the operation of the words cited, the husband and wife respectively would be admissible and compellable to give evidence for and against each other in civil though not in criminal cases. It may be doubted, however, whether this view is in conformity with the intention of the Lord Chancellor and a majority of the House of Lords, or what is more germane to the question, whether it is consistent with the principles of construction which the Common Law Judges, who will have in the first instance to decide the point, are likely to apply to the provisions of the statute.

It is quite clear that the act 14 & 15 Vict. c. 99, does not provide expressly or affirmatively that the husbands or wives of litigant parties shall or may be examined as witnesses in civil actions. Nor can it be successfully contended, we imagine, that the partial repeal of the first section of the 6 & 7 Vict. c. 85, can operate so as to render a husband or wife competent or compellable to give evidence against each other; the more especially when the words contained in the proviso partly repealed, excepting husbands and wives from the operation of the enactment, remain, we presume, designated, unrepealed. The recent act renders the parties competent as witnesses, and repeals so much of the proviso to the first section of the earlier act as is consistent with that intention; but it does not make wives or husbands competent witnesses for or against each other, and leaves that part of the proviso, declaring them to be incompetent, untouched.

It is also to be observed, that the 6 & 7 Vict. c. 85, only legalised the examination of witnesses previously incompetent on the grounds of *crime* or *interest*; and did not declare all persons other than those expressly excepted from its operation, admissible as witnesses. Even if the proviso to that section had not enumerated the husbands and wives of litigants amongst the persons excepted from the operation of the enlarging provision, it is at least doubtful whether they would have been within it. A wife has not hitherto been excluded from

giving evidence in favour of her husband in a civil suit, upon the ground that she was interested in the event; but upon considerations of public policy, arising out of the conjugal relation. These considerations are in no respect affected by Lord Denman's act, or by the further modification of the law of evidence effected by the act of last session.

If these views be correct, the law, with respect to the admissibility of husbands and wives of litigant parties as witnesses, remains unaltered, and persons standing in this relation are not competent either in civil or criminal cases. The elucidation and discussion of this question, which has already excited considerable attention and produced some conflicting opinions, has occupied no large a portion of our space, that the observations suggested by the remaining provisions of the Act for the Amendment of the Law of Evidence must be deferred to a future opportunity.

COUNTY COURTS' FURTHER EXTENSION BILL.

BAR ETIQUETTE.

THE rejection of this ill-digested measure by the House of Lords, at the close of the Session, appears to have afforded very general satisfaction. It can hardly be wondered at, however, if this satisfaction is not cordially shared by the County Court Judges, who, tantalized with the prospect of having their salaries increased from 1,000*l.* to 1,500*l.* per annum, now find that agreeable consummation indefinitely postponed. There is also a small section of the Junior Bar who lament the loss of that portion of the bill which repealed the clause of the County Courts' Act, restricting a barrister from practising in those Courts without being instructed by an attorney.

It is vain to deny, that there are some persons whose condition is so destitute that they may be excused for jumping to the generally erroneous conclusion, that any change is for the better. A few of this class, amongst the too numerous members of the Bar, indulged in golden visions at the idea of being dissociated from the other branch of the profession, whilst some, of a more practical turn, supposed, that a commercial partnership between the barrister and attorney, of which it seems numerous examples are to be found in the United States, could not fail to prove advantageous to one at least of the contracting parties.

The realization of these dreams, has been, we believe, fortunately for the profession, deferred *sine die*, with the County Courts' Extension Bill.

Meanwhile the question of Bar Etiquette has been discussed, we are informed, on all the circuits, and certain resolutions, said to have been adopted by the Bar on the Northern Circuit, have found their way into the daily newspapers, the effect of which appears to be, that it is not *infra dig.* for barristers to attend and sit in the County Courts, and that there is no objection, upon the ground of professional etiquette, to a barrister accepting, if he thinks fit, a brief in those Courts, with a fee of only one guinea. Whether these resolutions will produce any practical change in the County Courts in the North of England, we are not prepared to state, but in the neighbourhood of the metropolis, the County Courts, we have reason to think, have been constantly attended by barristers, and we are apprehensive that some well-authenticated instances might be adduced in which the *quidam honorarium* has fallen short of one guinea.

Turning from those uninviting details to matters of more general importance, let us hope, that the unsuccessful legislation of the Session which has so lately terminated, may not be without its beneficial influence, upon the profession as well as upon those who pride themselves upon directing and promoting measures for the reform and improvement of the law. The scheme of setting up one set of Courts as rivals to another, is so unstatesman-like and barbarous a system, that it should be at once abandoned. If the constitution of the Superior Courts is so essentially and irremediably defective that they cannot be remodelled or rendered effective institutions for the administration of justice, by all means let them be swept away! If the County Courts can be readily and beneficially adopted to the uses for which the Superior Courts cannot be advantageously employed, let them be substituted for the Superior Courts. But those who advocate the further extension of County Court Jurisdiction should be prepared to state fully and unequivocally the extent to which they deem it expedient that the transfer of jurisdiction should proceed.

Instead of introducing bill after bill, now filching away a small part of the jurisdiction of the Courts of Equity, and again snatching a large share of the business of the Common Law Courts,—grasping at insolvency and aiming also at bankruptcy,—the whole

matter should be brought under the consideration of the Legislature and the public, in a comprehensive measure, intelligible in its object and which could be fairly and usefully discussed. The interval between this and the commencement of the next Session of Parliament will afford an opportunity for digesting a measure creditable to those by whom it is introduced, and worthy of the consideration of the Legislature. The system of patch-work legislation heretofore adopted as regards the County Courts' Jurisdiction, is petty and mischievous, alike adverse to the interests of the legal profession and of the public.

EQUITY REFORM.

SUGGESTED IMPROVEMENTS IN PROCEDURE.

I purpose from time to time to offer some suggestions for diminishing the delay and expense of suits in Chancery.

The principal objections to the present course of procedure may be classed under the following heads:—

1. Pleadings.
2. Evidence.
3. The practice in the Masters' Offices.

At present I would merely offer some general hints: hoping that other practitioners will contribute their aid.

1. In lieu of *Bills* in Chancery,—with their repetitions of stating, charging, and interrogating,—I propose that a suit should be instituted by *petition*, and that (on peril of disallowance on the taxation of costs) the statements should be concise, and deeds and documents referred to, or the substance only recited.

It may be said that a "bill" is already in the form of a petition, and that the change of name will be useless. Not so: "a bill in Chancery" is a hateful thing to the public, whilst a petition intelligibly stating the complaint and verified by an affidavit, that it is true in substance, will go far to remove the popular prejudice. Besides in practice, a copy of the petition would be served, and thus subpoenas and office copies saved.

2. As to Evidence: instead of long interrogatories followed by long answers, the defendant might be examined *vidæ voce*, and so might the witnesses.

The defendant would file his defence, deliver a copy, and if requisite, examine the plaintiff, as well as witnesses *vidæ voce*.

3. As to the Masters' Offices, the refer-

ences should be confined to details into which it would be inconvenient and often impracticable for the Court to enter, and there should be additional clerks in the Masters' Offices to despatch the business.

The Judges in a large class of causes might decide the whole matter in question at one hearing, without any reference to the Master, or second hearing for "further directions."

It has been suggested that the Judges should be increased in number and sit at Chambers, to work out their own decrees, and that there should be fewer Masters. I think this plan is liable to many objections. The duty of the Judges should be to hear and decide on the application of the principles of equity. Their province should be strictly *judicial*—that of the Masters should be *ministerial*, and by proper assistance there need be no delay. R.

[We recommend these points to the consideration of our readers, and shall be glad to receive their remarks.—Ed.]

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

ARREST OF ABSCONDING DEBTORS.

14 & 15 VICT. c. 52.

Authority to Commissioners of Bankruptcy and Judges of County Courts to grant warrants for the arrest of absconding debtors. Writ of *capias* to issue thereupon; s. 1.

Before whom affidavits to be sworn; s. 2.

Warrants to be auxiliary to such writ of *capias*; s. 3.

Time and place of arrest of debtor to be endorsed upon warrant, and upon production, sheriffs to receive and detain such debtor; s. 4.

Persons arrested entitled to discharge in certain cases; s. 5.

Effect of writs of *capias* on previous proceedings; s. 6.

Endorsement on warrant; s. 7.

Persons arrested may apply to a Commissioner of Bankruptcy, a Judge, or the Court named in the warrant, for their discharge; s. 8.

Officer responsible for the due execution of warrant; s. 9.

Costs of such warrant to be costs in the cause, except as herein provided to the contrary; s. 10.

Fees to be taken in respect of warrant to be issued; s. 11.

Short title of act; s. 12.

The objects of the act are as follow :—

An Act to facilitate the more speedy Arrest of Absconding Debtors.

[1st August, 1851.]

WHEREAS the laws now in force for the arrest of debtors absconding from England are insufficient and inadequate for that purpose, by reason of the delay which is occasioned in obtaining the necessary process : And whereas frauds are perpetrated upon creditors residing at a distance from London by debtors embarking for distant countries from various towns and seaports in England : And whereas it is expedient to provide a more expeditious and efficacious mode of obtaining process for the arrest of debtors about to quit England in all cases where such debtors are now liable by law to be arrested : Be it therefore enacted,

1. That from and after the passing of this act it shall be lawful for any Commissioner of the Court of Bankruptcy acting for any district in the country, or the Judge of any District County Court, except the County Court Judges acting in the counties of Middlesex and Surrey, on application by or on behalf of any creditor upon due proof by affidavit, intituled in one of her Majesty's Superior Courts of Common Law, of the creditor applying, or of some other person, or by solemn affirmation in cases in which solemn affirmation is allowed by law, to the satisfaction of such Commissioner or Judge, that a debt of 20*l.* or upwards is owing to such creditor, and is then payable from the person or persons against whom such application shall be made, and that there is probable cause for believing that such debtor or debtors, unless he or they be forthwith apprehended, is or are about to quit England with intent to avoid or delay the said creditor, or with intent to remain out of the jurisdiction of the Courts of Law in England so long that thereby the said creditor will or may be delayed in the recovery of the said debt, to grant a warrant, such warrant being in the form and endorsed in the manner specified in the Schedule A. to this act annexed, or to the like effect, to the messenger of the said Court of Bankruptcy, or to the high bailiff of the said County Court, whereby the said messenger or high bailiff shall have authority, at any time within seven days after the date of the said warrant, including the day of such date, to arrest the person or persons named in such warrant, and him or them safely keep until he or they shall have given bail to such messenger or high bailiff, or made deposit with him, according to the practice observed in the Superior Courts of Law or until he shall have paid the debt and costs endorsed on the said warrant, or be otherwise discharged from arrest under such warrant by the due course of law, and that such warrant shall bear date the day of the issuing thereof, and may be executed in any part of England, and that a copy of such warrant or warrants shall at the time of the arrest be served upon the party arrested : Provided always, that every creditor who shall cause such warrant to issue shall

forthwith cause to be issued a writ of *capias*, and also, in cases where no action shall be pending, shall, before the issuing of such writ of *capias*, cause a writ of summons to be issued out of some one of the Superior Courts of Law against such debtor or debtors, and that upon such *capias* all mandates and warrants shall issue according to the practice now in use, notwithstanding that the defendant shall have been arrested by virtue of any warrant or warrants granted by such commissioner or judge, and such debtor or debtors shall, if in custody, be served with such writ of *capias*, within seven days from the date of such warrant, including the day of such date ; and thereupon such debtor or debtors shall be considered and deemed to have been arrested by virtue of the said writ of *capias*, and all proceedings shall be had upon such writ of *capias* as if the same had been issued prior to the issuing of such warrant, and the arrest made on such writ of *capias*, and according to the practice now observed in the said Superior Courts of Law.

2. The affidavit or affirmation required by this act may be sworn or made before such commissioner or judge, or before any person having authority to administer oaths in any of the Courts of Law aforesaid.

3. The warrant or warrants which shall be issued by virtue of this act shall be auxiliary only to the processes now in use, and shall be wholly void and of none effect whatsoever, as a protection to the person on whose behalf such warrant shall have issued, unless such writ of *capias* shall be issued and served in manner aforesaid.

4. The person to whom the warrant hereby authorized to be issued shall be directed shall, immediately on the same being executed, endorse a certificate thereupon of the time and place where the debtor was arrested ; and the production of such warrant and certificate to the sheriff of the county where such warrants shall have issued, or to the keeper of the gaol of such county, shall be a sufficient authority to such sheriff or keeper to detain such debtor or debtors until he or they shall be discharged by due course of Law.

5. It shall be lawful for any person arrested upon any such warrant forthwith before the issuing of the said writ of *capias* to pay the debt and costs which shall be endorsed on such warrant to the said messenger or high bailiff as aforesaid or to enter into a bail bond to such messenger or high bailiff, with two sufficient sureties, for the amount which shall be endorsed on such warrant, conditioned to put in special bail as required by the said warrant, or to make deposit of the sum endorsed on such warrant, together with 10*l.* for costs, and thereupon he shall be entitled to be discharged from custody, and such messenger or high bailiff is hereby authorized to discharge such person accordingly.

6. As soon as the person so arrested as aforesaid has been taken into custody, or detained, under the writ of *capias* hereinbefore mentioned, the force and effect of the said

warrant so granted as aforesaid, shall immediately cease and determine, and the said sheriff shall hold the said person under or by virtue of the said writ of *capias*, in like manner as if the said person had been first arrested under and by virtue of the same, or in case the person so arrested shall have made deposit with the said messenger or high bailiff as aforesaid, or entered into such bail bond as aforesaid, then, upon delivery to the messenger or high bailiff respectively by whom such person was arrested of a copy of the warrant granted by the sheriff upon such writ of *capias* as aforesaid, the said messenger or high bailiff shall pay over to such sheriff as aforesaid the said deposit, or assign to the said sheriff such bail bond as aforesaid, and the said sheriff shall then hold the said deposit or bail bond, and shall be entitled to enforce the said bail bond in his own name, or to assign the same in the same manner as if the said person had been first arrested on the said writ of *capias*, and the said deposit had been made, or bail bond entered into with the said sheriff; provided always, that the said sheriff shall not be in any manner liable or answerable for any default, misbehaviour, or miscarriage of the person to whom such warrant was addressed, or of the person or persons making the arrest under and by virtue of the said warrant: Provided also, that if no writ of *capias* be issued and served within seven days from the date of the said warrant, including the day of such date, the person arrested under such warrant shall be entitled to be discharged from custody, or in case the deposit has been made with, or bail bond given to, the said messenger or high bailiff, then the said deposit shall be returned, and the said bail bond given up to be cancelled.

7. Such warrant shall be endorsed with the amount of debt and costs claimed by the plaintiff in such manner as writs of *capias* are now directed to be endorsed, and on payment of the amount so endorsed all proceedings shall be stayed, and the person so arrested be discharged from custody, and he shall be at liberty afterwards to tax the costs so endorsed as if he had been arrested under a writ of *capias*.

8. It shall be lawful for any person for whose arrest a warrant shall have been granted to make application, either before or after arrest shall have been made by virtue of the said warrant, and before a writ of *capias* shall have been issued as aforesaid to any Commissioner of bankrupt, or County Court judge as aforesaid, or to any judge of the said Superior Courts, or to the Court mentioned in the affidavit of debt or warrant for the arrest, for a summons or rule calling upon the creditor who shall have obtained such warrant to show cause why the warrant should not be set aside and vacated, if such application shall be made before arrest, or why the debtor should not be discharged out of custody, if the application should be made after arrest, and that it shall be lawful for such commissioner or judge or

Court, to make absolute or discharge such summons or rule, and direct the costs of the application to be paid by either party, or to make such other order therein as to such commissioner, judge, or Court shall seem fit; provided that any such order made by a judge may be discharged or varied by the Court, on application made thereto, by either party dissatisfied with such order.

9. The officer to whom such warrant shall be directed or addressed as aforesaid shall be subject to the jurisdiction of the Court in which the action shall be brought, or of any judge thereof, and shall be responsible to such Court or judge, and to the person at whose suit such warrant shall issue, for the due execution of the said warrant, in the same manner exactly as sheriffs are now responsible for the due execution of all writs of *capias* directed or addressed to them, and shall be entitled to the same protection as sheriffs now are entitled to on executing such writs.

10. The costs of and attending the warrant hereby authorized to be issued, and the arrest thereon, shall be deemed to be costs in the cause: Provided always, that no such costs shall be allowed to a plaintiff unless the Court or the proper officer thereof is satisfied, by affidavit or otherwise, that the plaintiff hath good reason to believe that he would probably have failed in causing the defendant to be arrested if he had proceeded in the first instance by application to a judge of one of the Superior Courts for a writ of *capias*, without first applying to a Judge of a County Court or a Commissioner of the Court of Bankruptcy, as the case may be, under the provisions of this act.

11. The fees mentioned in Schedule B. to this act annexed shall be paid to the parties in the said Schedule named, and that no other fees shall be allowed or taken in respect of the warrant to be issued by virtue of this act, and that the costs of the writs of *capias* and summons shall be the same as if this act had not passed; and the said fees shall be deemed subject to be regulated, varied, increased or lessened, either by one of her Majesty's principal Secretaries of State, with the consent of the Commissioners of her Majesty's treasury, as regards such fees as are receivable by any officer of the County Court, or by the Lord Chancellor, with the like consent as regards such fees as are receivable by any officer of the Court of Bankruptcy; and a table of such fees as are hereby receivable by any officer of either Court respectively shall be put up in some conspicuous place in the County Court and the Bankruptcy Court respectively.

12. In citing this act in other acts of parliament, or in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Absconding Debtors Arrest Act, 1851."

SCHEDULE A.

The Absconding Debtors' Arrest Act, 1851.

Whereas A. B. [the creditor] hath this day

proved upon oath [or solemn affirmation, as the case may be,] to my satisfaction that C. D. [the debtor] is indebted to the said A. B. in the sum of £ . . . , and that there is probable cause for believing that the said C. D., unless he be forthwith apprehended, is about to quit England with such intent as is mentioned in the Absconding Debtors' Arrest Act, 1851. These are to desire and authorize you, that you take the said C. D. wherever he may be found, and him safely keep until he shall have given you bail, or made deposit with you according to law in an action ["on promises," or "of debt," or "covenant," as the case of action may be,] at the suit of A. B., or until the said C. D. shall have paid the debt or costs endorsed on this warrant, or shall by other lawful means be discharged from your custody. I do further command you to whom this warrant is directed, that on execution hereof you do deliver a copy hereof to the said C. D. And I hereby require the said C. D. to take notice that application will be made forthwith to the Court of [Queen's Bench, or Common Pleas, or Exchequer, or Common Pleas at Lancaster, or Pleas at Durham, as the case may be,] for a writ of *capias* to be issued against the said C. D., and a copy of such writ if obtained will be served upon the said C. D., if still in custody, within seven days from the date of this warrant, including the day of such date. And I do further command you to whom this warrant is directed, that immediately after the execution hereof you do certify by endorsement hereon the time and place when and where you shall have executed the same. Dated the . . . day of . . . A. D.

This warrant is to be executed within . . . days from the date hereof, including the day of such date, and not afterwards.

(Endorsement.)

This warrant was issued by . . . of . . . attorney for the within named.

A. Warning to the Defendant.

Within seven days from the day of the date of this warrant, including the day of such date, you will be served with a writ of *capias*, and thereafter you will be considered as arrested by virtue of such writ of *capias*, and all proceedings will be had upon the said writ of *capias* as if this warrant had not issued, or you may be discharged forthwith on depositing in the hands of the officer to whom this warrant is directed the sum of . . . and 10s. for costs, or on payment to such officer of the debt and costs endorsed on this warrant, or on entering into a bail bond to such officer, with two sufficient sureties, for the amount endorsed on this warrant.

The plaintiff claims £ . . . for debt and £ . . . for costs.

Bail for the sum of £ . . . by order of [the party issuing the warrant].

SCHEDULE B.

Fees.

To the attorney, for preparing the affidavit of debt, and showing that the debtor is about to abscond, and oath	£	s.	d.
To the same, for attending to issue the warrant . . .	0	10	0
To the clerk of the County Court on the issuing of a warrant . . .	0	6	8
To the party executing the warrant, for the capion . . .	1	1	0
To the same, for every mile from the place where the warrant shall be issued to the place where it shall be executed, a further sum of . . .	0	0	6
To the same, for every mile from the place where the debtor shall be arrested to the goal where he shall be lodged, the further sum of . . .	0	1	0

NEW RULES AND ORDERS

OF THE COUNTY COURTS.

[Continued from p. 297, ante.]

84. *Adjournment of cause.*—Where a summons has been served, the parties may by consent, at any time before the cause is called on, on payment to the clerk of the fee on an adjournment, postpone the hearing to such subsequent Court as the judge shall direct, but, where a cause is called on, the hearing fees shall be forthwith payable, and if the plaintiff on being required thereto do not pay such fees, he shall be deemed not to have appeared; and if the cause be adjourned, after being called on, and the hearing fees paid, the fee on an adjournment shall then be paid by the party requiring the adjournment, and at the adjourned hearing, or hearings, of such cause, no further hearing fee shall be payable, but the cause may from time to time be adjourned, on payment of the fees on an adjournment.

85. 9 & 10 Vict. c. 95, s. 81.—Where a cause is adjourned, no order of adjournment shall be served on either party, unless by direction of the judge.

86. 9 & 10 Vict. c. 95, s. 81.—When anything required by the practice of the Court to be done by either party, before or during the hearing, has not been done, the judge may, in his discretion, and on such terms as he shall think fit, adjourn the hearing to enable the party to comply with the practice.

87. *Hearing.*—9 & 10 Vict. c. 95, s. 79; 13 & 14 Vict. c. 61, s. 10.—Where a cause is struck out in consequence of the non-appearance of both parties, no hearing fee shall be payable.

88. If at the return day of a summons, or at any continuation or adjournment of the Court at which it is returnable, the plaintiff does not appear, the judge may in his discretion award to the defendant costs in the same manner, and to the same amount, as to counsel, attorney, witnesses, and other matters, as if the cause had been tried, but no hearing fee shall be charged.

89. No attorney shall be allowed to appear for any person in a County Court, until he has signed a roll or book to be kept by the clerk for that purpose, but no fee shall be payable for that purpose.

90. It shall not be necessary for either party previous to the hearing, to give notice to the other, or to the Court, of his intention to employ a barrister or attorney to act as his advocate at the hearing, and the allowance of costs for such barrister or attorney shall not be affected by such want of notice.

91. The provisions of the statute 9 & 10 Vict. c. 95. s. 91, as to the persons who shall be allowed to appear for any party in any proceeding in the County Courts shall apply to all proceedings in insolvency and for protection.

92. Where an infant defendant appears at the hearing, and names a person willing to act as guardian, and who then assents so to act, such person shall be appointed guardian accordingly; but if the defendant do not name a guardian, the judge may appoint any person in court willing to become guardian, or in default of such person, the judge shall appoint the clerk of the Court to be guardian, and the cause shall proceed thereupon as if another person had been appointed guardian, and the name of the guardian appointed shall be entered in the form in the Schedule, and no responsibility shall attach to the person so appointed guardian.

93. Where a plaintiff avails himself of the provisions of sect. 68 of 9 & 10 Vict. c. 95, and proceeds against only one or more of several persons jointly answerable, the defendant or defendants sued may avail himself or themselves of any set-off or other defence to which he or they would be entitled if all the persons liable were made defendants.

94. *Amendment.*—Where a person, other than the defendant, appears at the hearing, and admits that he is the person whom the plaintiff intended to charge, his name may be substituted for that of the defendant, if the plaintiff consents, and thereupon the cause shall proceed as if such person had been originally named in the summons, and, if necessary, the hearing may be adjourned on such terms as the judge shall think fit, and the costs of the person originally named as defendant shall be in the discretion of the judge.

95. Where a party sues or is sued in a representative character, but at the hearing, it appears that he ought to have sued or been sued in his own right, the judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly, and the case shall then proceed in all respects as to set-off and other matters, as if the proper description of the party had been given in the summons.

96. Where a party sues, or is sued, in his own right, and it appears at the hearing that he should have sued or been sued in a representative character, the judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accord-

ingly, and the case shall then proceed in all respects, as to set-off and other matters, as if the proper description of the party had been given in the summons.

97. 9 & 10 Vict. c. 95, s. 59.—Where the name or description of a *plaintiff* in the summons is insufficient or incorrect, it may at the hearing be amended at the instance of either party by order of the judge, on such terms as he shall think fit, and the cause may then proceed as to set-off and other matters as if the name or description had been originally such as it appears after the amendment has been made.

98. 9 & 10 Vict. c. 95, s. 59.—Where the name or description of a *defendant* in the summons is insufficient or incorrect, and the defendant appears and objects to the description, it may be amended at the instance of either party by order of the judge, on such terms as he shall think fit, and the cause may proceed as to set-off and other matters, as if the name or description had been originally such as it appears after the amendment has been made; but if no such objection is taken, the cause may proceed, and in the judgment, and all subsequent proceedings founded thereon, the defendant shall be described in the same manner.

99. In actions by or against a husband, if the wife is improperly joined or omitted as a party, the summons may at the hearing be amended at the instance of either party by order of the judge, on such terms as he shall think fit, and the cause may proceed as to set-off and other matters, as if the proper person had been made party to the suit.

100. Where it appears, at the hearing, that a greater number of persons have been made plaintiffs than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit, and the cause may proceed as to set-off and other matters, as if the proper party or parties only had been made plaintiffs.

101. Where it appears at the hearing, that a less number of persons have been made *plaintiffs* than by law required, the name of the omitted person may at the instance of either party, be added by order of the judge, on such terms as he shall think fit, and the cause shall proceed as to set-off and other matters, and judgment shall be pronounced, as if the proper persons had been originally made parties, and unless the person whose name is so added shall assent thereto, either at the hearing or some adjournment thereof, personally or by writing signed by him, or his attorney, proceedings on the judgment shall be stayed, until the Court next after five clear days from the day of hearing, and if the person whose name is added shall at the hearing, or an adjournment thereof, consent to become a plaintiff, (such consent being in writing, signed by him, or his attorney,) execution shall issue as the judge shall think fit; but if such party shall not consent to become a plaintiff in manner

amended, either at the hearing or at an adjournment thereof, judgment of nonsuit may be entered.

102. Where it appears at the hearing, that more persons have been made *defendants* than by law required, the name of the party improperly joined may at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit, and the cause shall proceed as to set-off and other matters, as if the party or parties liable had been sued, and judgment shall be given for the party improperly joined.

103. Where several persons are made *defendants*, and all of them have not been served, the names or names of the defendant or defendants who have not been served, may at the instance of either party be struck out by order of the judge on such terms as he shall think fit, and the cause shall then proceed in all respects as to set-off and other matters as if all the defendants had been served.

104. Where at the hearing a variance appears between the evidence and the matters stated in any of the proceedings in the County Court, such proceedings may, at the discretion of the judge, and on such terms as he shall think fit, be amended, and such amendment, as well as amendments as to parties, when ordered, shall be made in open Court, and during the sitting of the Court.

105. In all cases of amendment, a corresponding amendment shall be made in the presence of the judge, in the proceedings of the Court, antecedent to such amendment, and the subsequent proceedings shall be in conformity therewith.

[To be continued.]

UNITED LAW CLERKS' SOCIETY.

ANNIVERSARY FESTIVAL.

[Concluded from page 299.]

The *Master of the Rolls*, said, that he had the honour to propose a toast, which he was sure they would drink with the greatest possible pleasure, when he told them that the name which he was about to introduce to their notice was, that of their most worthy and excellent Chairman, the Vice-Chancellor Sir James Lewis Knight Bruce. Under any ordinary circumstances, and if that most worthy and excellent gentleman were not present, he should be inclined to dilate at greater length than he should feel himself justified in doing then, upon those qualities which had won for him their esteem and their gratitude; he should therefore content himself with saying, that with respect to some persons their names were so distinguished that it was only necessary to mention them to call up to the minds of others those great qualities which such persons possess, and which recollection was better than any eulogium which could fall from the lips. Such was the character of the toast he was then proposing to them, and certainly he could not consistently with his feelings, or with those which his right

hon. friend must necessarily entertain himself—express those opinions respecting his high moral and intellectual qualities, which in his absence he should think himself not only justified in doing, but feel a duty and delight in doing; he should therefore confine himself to saying, that those who had had the privilege of his private society or of knowing him in private society, and those who had watched his career in public to the high judicial position to which he had then attained, must know that he pre-eminently possessed the qualities of a lawyer, a scholar, and a gentleman. It was a peculiar gratification to the *Master of the Rolls* to be able to express his feelings upon the present occasion, or to hint at them rather than to express them, because he had felt that he could not now speak without remembering, that in the very earliest period of his professional career, when he felt those difficulties and labours, which all men have experienced who have toiled seriously at their profession—that he received much kindness and encouragement, and great advantage and facility in overcoming those difficulties by the generous friendship of that right hon. gentleman. It was the recollection of those services which made him now proud to acknowledge them—services given to him at a time when their situation in the profession was far different than it was now—he was the more desirous of calling their attention for a moment to that quality in the character of their right hon. friend, because it appeared to him that a very wholesome moral lesson might be derived from it, namely, that it was incumbent upon them as they were gathered together there in a generous work of universal benevolence, not merely to do so by affording pecuniary assistance to those who stood in need of it, but also by assisting with kindness and encouragement, by relieving those anxieties and allaying those pains which existed in the hearts of all men who toiled upwards in their profession, but which few knew but those who had gained their position by hard and strenuous exertions. It was, he said, the recollection of what he himself had felt that induced him to give the earnest exhortation, “Assist those below you—Assist one another not merely by giving money to the distressed, which undoubtedly was a matter of the greatest importance, but assist those who were toiling for independence and who wanted that assistance,—perform those acts of special kindness which nothing but a friendly heart could bestow;”—it was because he knew that no man possessed those qualities more pre-eminently or practised them more strongly than the gentleman whose name was coupled with the toast he was about to submit, that he then, with heartfelt feelings, which he was sure they would all share in, proposed to them the health of their friend and Chairman, the Vice-Chancellor Sir James Lewis Knight Bruce.

The learned *Chairman* in returning thanks, offered them his thanks, and assured them that he was deeply sensible of the manner in which they had received what the *Master of the Rolls*

had been pleased to say concerning him: the value of commendation was more or less, or none, according to the quarter whence it came; there were praises to which men did not like to be subjected—and much less men than the great Athenian—under that operation, had said, "What grievous blunder have I been committing." But who could disregard the approval of his right hon. friend? It was true, that upon that very word he might be challenged, if not principally, yet to the favour; still caring less for the challenge than for the favour, he was ready to admit the partiality. Might he always be partial in his case—unless, *quod absit*, he should be a suitor. But there were not wanting in him—there were not wanting among those who, he was gratified to believe, had heard his words approvingly, the knowledge, the judgment, the character, without which not even "a soft tongue breaketh the bone." Therefore he considered thankworthy, therefore he accepted and valued, the kind expressions of Sir John Romilly. He had pronounced a great name; the illustrious inheritance of his friend—"Sed te censeri laude tuorum soluerim." The Master of the Rolls had not been inclined or driven—"aliorum incumbere famæ"—he accepted that great inheritance as augmenting his debt to society; he knew that men expected much from him who bore it, and he had not disappointed them. The whole legal body rejoiced to see the son worthily filling the place that becomed the father's name so well. They rejoiced to know that if Sir Samuel Romilly ever pictured to himself the tenor or course of life which he would most wish a beloved son to hold, the picture in this instance could not have been brighter than the reality. Well was it when "the glory of children were their fathers." Wisdom and nature taught us that there was also a common blessing—when the son of Sirach says, "There are nine things which I have judged in mine heart to be happy, and the tenth I will utter with my tongue;" "a father that hath joy of his children" stands the first. Just were the congratulations to his learned friend on the union of the double benediction. For himself, the Chairman would only say, that he desired to express in common with Sir J. Romilly, their feelings of strong goodwill to the cause which brought them there to-day, and that always happy to act with him, he could never be more so than when endeavouring to serve that institution, for which once more they heartily solicited the support of the meeting.

Mr. Freshfield, M.P., on proposing the health of the Benchers of Lincoln's Inn, stated, he felt some difficulty in rising immediately after the speech of the Right Hon. the Vice-Chancellor Knight Bruce, but he assured them the excellence of his speech should consist in its brevity. He had to propose the health of the Benchers of Lincoln's Inn, and thanks to them for having received the Society in their magnificent Hall. While he considered that this grant was a high honour conferred upon the Society by those eminent legal persons, on the other hand, he could not but conceive that

the Society would do to the Benchers no dishonour, because they brought within its walls elements worthy of their admiration and imitation. He would not at any time dilate at any length upon any sentiment he had to submit, still less after the several admirable harangues they had heard from the noble and distinguished individuals who had addressed them that evening, but in addition to their commendation perhaps he might be allowed to say that, to that industry and honour which all had wished to commend, they owed the production of some of the highest members of the profession to which they all belonged. It was upon the conduct of those individuals who were called Law Clerks, that the deepest interests of all society depend, for they might be considered as the cultivators of the legal soil—they prepared it, and it was their propriety and honour which gave confidence to the proceedings under their care. As far as regarded their own prudence, it was right that they should take care that the individuals forming the members of this Society should be protected from that poverty upon which there was generally such a stigma cast, for they knew that it was a fact that men think well of you if you can take care of yourselves. The Society had prospered to an extent which no one could have anticipated—who would have imagined in 1832, that they would have now been allowed to occupy for their Anniversary Dinner such a hall as that in which they then met?—Who could then have anticipated that they would have been presided over in the year 1851 as they were on that occasion?—He congratulated them upon their success, and he hoped it would continue to the end of time. He concluded, as he began, by proposing the health of the Benchers of Lincoln's Inn, and thanking them for having lent their hall upon the present occasion. The toast would be responded to by the Right Hon. Vice-Chancellor Turner, of whom he might be permitted, before he sat down, to express the gratification he felt at his elevation to the high and important situation he then filled.

The Vice-Chancellor Turner responded with the greatest pleasure and sincerity for the honour they had paid the Benchers of Lincoln's Inn. It had ever been a proud satisfaction to them to have assembled within the walls of that hall every rank and grade of the profession in one common cause of benevolence and kindness to their poorer fellow-labourers in the legal profession. His right hon. friend, the Chairman, and the noble lord near him had observed, that this was an anniversary of no light importance—there were assembled at that time within the metropolis a vast host of foreigners who had come to witness the progress of the arts and sciences of this and other nations; let them hope, as he owned he most cordially did, that they would not fail to observe the growth and progress of valuable institutions in this country, and that they would carry back to their respective homes the feelings of kind regard which they would receive among the various classes of the great metropolis—that they would

mark the progress of society in this country, not merely, or perhaps, more remarkably in the kindness which was shown to them by the upper classes, but in the virtue and independence of the middle and lower classes—they would see those who had raised themselves above the stain of poverty and disgrace, contributing to the assistance and support of those who were without pecuniary means—they found among those who had surmounted the struggles of the profession, men who had risen from that class which it was the object of this society to benefit. It was most gratifying to him to be called on to respond to the toast of the Benchers of Lincoln's Inn, and in their name he begged to express the wish, that every prosperity might attend this institution.

Mr. Maynard proposed the Bench, the Bar, and the Profession. He would not have consented to propose the toast had he not felt that it was one which needed no recommendation to carry it at once to their acceptance. He should most certainly have hesitated before he acquiesced with the request that was made to him, had he not felt that at a meeting composed of every branch of that profession of which they were all common members, that it might not be unacceptable that a toast should be given by one of the members of the larger branch of that profession, and having been selected as the organ of that branch, he should be wanting to himself if he did not come forward and perform the task required of him. He believed there was no class of men more competent to appreciate the great advantages enjoyed by this country in the Bar than his own branch of the profession. They had witnessed the seal and talent of the Bar in the discharge of the important duties which were entrusted to them, and he certainly did feel it was a high privilege belonging to their profession to know, that however distinguished the members of the Bar might become in time, whatever greatness they might attain, through the exercise of their talents and industry, they never forgot the medium by which those talents were brought before the public,—that profession without which they might have remained neglected and unknown. With a Bar such as they possessed, it was not to be wondered at that the Bench of Judges of this country, from which Bar they were necessarily selected, should be composed of men pre-eminent for their learning, their talents, their integrity, and their independence. He felt that the Bench and the Bar, and especially when he looked at the splendid hall in which they had then the honour to assemble, had given their cordial encouragement to the Society—they had not only supported it by their pecuniary contributions, in themselves essentially necessary, no doubt, but they had promoted its interests in a much more important degree by their attendance on occasions such as that. He was quite sure that the moral effect of the attendance of the Judges and Bar on these occasions must essentially advance the interests of the institution. He

was proud that on the present occasion they should be honoured with the presence of the most distinguished members both of the Bench and the Bar, and he hailed it as one of the most favourable circumstances of the institution, that amongst the gentlemen present, there should be members of the Bench coming here so soon after their elevation to their high station, to testify their good opinion of the objects of the institution, and to give to it the sanction of their presence. He would not trespass any longer upon their attention, indeed, he needed not have said so much to induce them to receive the toast with the utmost cordiality; he then asked them to join him in drinking the health of the Bench, the Bar, and the Profession.

Mr. Phillimore returned thanks. He assured them it was with a deep sense of his own unworthiness that he rose to acknowledge the toast which had been so kindly proposed, and which they had just been good enough to drink. He was called upon to perform a task which the most highly cultivated intellects of this country would not be more than adequate to fulfil. He thought that the body embraced in the toast had at the present time a more than common claim to their reception, for was it possible that any one should have observed the crowds that throng the streets, gathered together from every quarter of the globe to admire the prodigies of art and industry, without being impressed with the fact, that the influence of this gathering together of nations must traverse the globe until all learn that great but too long neglected lesson, that peace has her victories no less than war! Was there any one, he said, who had been so careless an observer of what was going on around them, as not to have observed the influence which its example must exercise, as not to perceive that the question would be asked, how comes it to pass that all these nations, countries, and tongues mix together in peace and harmony—how comes it to pass that the state of things is so different to what it was a few years ago, that now so far from any alarm or disturbance, or any treasons, stratagems and crimes, that joy is in every heart, and satisfaction beams in every countenance? No doubt there were many causes to which this might be ascribed, but one main reason of this happy state of things, of the happy spirit which prevailed around them was, the influence and exertion of those whose health they had been good enough to drink, and of whom he was the unworthy representative; the glorious result of those exertions being the pure administration of justice—that was the staple of this country which could not be too highly valued or cherished; it was far more precious than all the wealth that ever flowed from Golconda, or all the Koh-i-noors that ever had existence. That was the imperishable gem in the diadem of England. He agreed, if he might say so without presumption, with the noble lord who had addressed them so eloquently, that it was not the commerce that brought home the treasures of the world—not

their colonies that studded the surface of the ocean—not their fleets that carried the flag of England wherever seas could roll or winds could waft them—that without this element the pure administration of justice would not be of the slightest avail; that was the key-stone of the noble and well-constructed arch, that bound together our empire and our constitution—that was the cementing principle, without which everything would hasten to dissolution and decay. While they kept that, they need not fear dangers from without nor animosities from within. He could not but feel most grateful to them for the honour they had done the body which he represented, and the advantages conferred by it, which he had feebly endeavoured to describe. He thanked them for the approbation with which they had received their health, because it showed they thought they were not unworthy of trust.

Mr. *W. Rogers* requested permission to impress upon their attention, that he hoped before they met again next year, which he trusted all of them who were there present would do, that they would every one of them consider it their duty to make themselves acquainted with the proceedings of the Society, and the beneficial manner in which it worked. This was a simple practical suggestion which he wished to make, and he hoped one and all of them would receive and adopt it.

Mr. *Baggallay*, in proposing the Trustees, said, he was quite sure that as soon as he named the toast, it would have all the honour done to it. It would perhaps be difficult to find a body of gentlemen collected together more perfectly capable of appreciating the advantage of having good Trustees than the assembly he now saw before him—he was quite sure he was only speaking the sentiments of every member of the United Law Clerks' Society, when he stated that they had most excellent Trustees, he was perfectly convinced that Mr. Foss and Mr. Bigg, from the time they first accepted those duties, had most zealously discharged them. It was only very recently that he had become acquainted with the existence and objects of the Society, but he had most anxiously observed its proceedings, and he was confident that the duties of Trustees had been performed in such a manner by Mr. Foss and Mr. Bigg, that they would all join him in drinking the health of those gentlemen, wishing that they might long be spared to give the Society those services which they had hitherto so very effectively rendered.

Mr. *Edward Smith Bigg* responded, thanking them for the honour they had done himself and his colleague. They might congratulate themselves upon that occasion on the practical testimony which had been given of their attachment to the important objects for the promotion of which they had met, and he hoped they would be enabled still farther to increase the success of the Society.

SUGGESTED IMPROVEMENTS IN PRACTICE.

PARTICULARS OF SET-OFF.

SIR,—In actions of debt (or on promiss where particulars are necessary) the plaintiff is obliged to furnish with the declaration when delivered, particulars of his demand, or in the event of his not doing so, any application made for them by the defendant, the plaintiff is liable to pay the costs of.

In cases where a set-off is pleaded, ought it not also to be the invariable rule that particulars thereof should in like manner be delivered therewith, or the defendant made liable to pay the costs of any application made for them by the plaintiff? This seems to be but fair, and if ruled accordingly, would not occasion (what in most cases appears is now the practice), the attendance of the plaintiff's attorney before the judge on the summons to plead several matters, to request that it may be part of the order, that the particulars of set-off may be delivered with the pleas. E.C.

INTERESTS OF MARRIED WOMEN.

SIR,—In all cases where a married woman is possessed of freehold property in her own right, she cannot in any manner part with her interests therein, unless she acknowledges the deed by which she does so before a Judge or before Commissioners, and that she is not in any manner influenced by the control of her husband, but is solely exercising her own free will in relation thereto. In addition to which a solicitor is obliged to make oath that he informed the lady fully of the nature and effect of such deed, and that she executed the same of her own free will and without the control or influence of her husband.

How much more property of a similar nature, as well as sums of money, or of a personal nature, and to a much more considerable extent is simply held under powers of appointment, to be exercised by married women as if they were sole and unmarried, and in which cases it is not considered necessary that any acknowledgment of the deed should take place. I would therefore suggest, that in the exercise of the various powers of appointment which are in most cases vested in women under their marriage settlement, or under wills bequeathing to them property as a separate and distinct estate, independent of their husbands, that it would be somewhat of a substantial safeguard, that no undue influence had been used to obtain the execution of such power, if the deed was acknowledged before a judge or before Commissioners similar in all respects as is necessary in the conveyance of freehold property by a married woman. E.C.

SELECTIONS FROM CORRESPONDENCE.

BURIAL IN CHURCH.

AN incumbent of a parish dies, and without consulting the patron of the living—or the

churchwardens, is interested by his executors underneath the vicar's pew within the church, the succeeding vicar is much annoyed at the circumstance, and his family every sabbath have the discomfort of sitting in the pew in church, over the remains of the late incumbent, much to their annoyance and to the injury of their health. What is to be done? and what power exists to remedy the evil? Can the remains be removed to a more eligible position in the church or churchyard with or without a faculty?

A CONSTANT READER.

VISITORS OF CATHEDRAL SCHOOLS.

ALTHOUGH an old practitioner, I confess I am not a little puzzled at the powers of a visitor, of Rochester School for instance, or the like. I am utterly at a loss to comprehend the line of demarcation between the powers of a visitor, and the powers and jurisdiction of the Court of Chancery.

Perhaps some of your readers may be enabled to throw some light on the subject. It would seem, if the Rev. Mr. Whiston's position is well founded, that not only in the Rochester case, but in that of most of the other cathedral foundations in the kingdom since the dissolution of monasteries, that the bishop, and dean, and chapter, or canons, with the precentor, choristers, bedesmen, grammar-scholars, &c. &c., are entitled to be paid *pro rata*, and to have the entire aggregate of the emoluments of the cathedral distributed among the whole of the staff, in the same proportions as the stipends are granted by the charter of endowment, and that it is not competent for deans and chapters to dole out merely the stipends granted by the charter to the minor canons, choristers, grammar scholars, &c., as therein designated, and to retain the immense surplus, perhaps increased one hundred-fold, for the exclusive use of the lord bishop and the canons or dean and chapter.

This is a most important consideration, and will, I hope, ere long, be mooted, and brought to a legal adjudication.

12 Aug. 1851.

AMICUS.

REFUSAL OF CHURCH RATES.

I AM happy to see, from the Parliamentary Reports, in reference to a letter in your last number, that the evidence already taken on this important subject by a Committee of the House of Commons, is about to be printed. It is rumoured that nearly 100 churches in England are now in a most dilapidated state in

consequence of the factious refusal of church rates.

A.

NOTES OF THE WEEK.

LORDS JUSTICES OF APPEAL.

THE profession is naturally curious to know who will be the two Lords Justices of Appeal in the Court of Chancery. The *Cardiff and Merthyr Guardian* of the 16th instant states, as to one of them, that "the Right Honourable the Vice-Chancellor Knight Bruce has been promoted, to the gratification of lawyers of every party and all politics, to the new office of Lord Justice of the Court of Appeal." This announcement has not yet appeared in the London papers. The appointment would no doubt be a popular one. His Honour "has won golden opinions of all ranks of men." It will be recollected that the Conservative ministry appointed Mr. Justice Erle, with the universal approbation of all parties, and already the Whig government have followed the example by selecting Vice-Chancellor Sir Geo. Turner. Another promotion from the same ranks would show that political connexion is hereafter not to be regarded in choosing the fittest man for judicial office. This would be "a consummation devoutly to be wished."

We have reason to believe that this rumoured appointment of Vice-Chancellor Knight Bruce is correct; and we understand that Lord Cranworth will be the other Lord Justice of Appeal.

CHAIRMAN OF THE METROPOLITAN COMMISSIONERS OF SEWERS.

EDWARD LAWES, Esq., Barrister-at-Law, has been appointed Chairman of the Commissioners of Sewers. Some observation has been made that an engineer ought to have been appointed, but probably he would have been prepossessed with his own theory; and although the learned gentleman may, perhaps, not be practically acquainted with engineering details, he will, we have no doubt, preside over the meetings of the Commissioners and carry out the objects of the legislature most ably and diligently. He will thoroughly understand the powers of the Board; he has had considerable experience as a Commissioner, and his habits of business will ensure a regular and due discharge of the important duties confided to his care.

NEW MEMBER OF PARLIAMENT.

THE Honourable Charles Stewart Hardinge, for Downpatrick, in the room of Richard Ker, Esq., who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

South Staffordshire Railway Company v. Hall.
July 18, 1851.

LANDS CLAUSES CONSOLIDATION ACT.—LANDS INJURIOUSLY AFFECTED BY RAILWAY.—COMPENSATION.—LACHES.
Held, affirming with costs the decision of

Vice-Chancellor Lord Cranworth, dissolving an *ex parte* injunction to restrain persons whose farm was alleged to be injuriously affected by reason of a railway passing over the road leading thereto, from proceeding under the 8 & 9 Vict. c. 18, s. 66, to assess the compensation, that the company

having suffered a period of four months to elapse before appealing from such decision; were stopped from seeking to be placed in the same situation in which they were on the *ex parte* injunction being granted, and to summon a jury to assess the compensation, notwithstanding the 21 days under s. 68 had elapsed.

THIS was an appeal from the decision of Vice-Chancellor Lord Cranworth, (reported 1 Simons, N. S. 389,) dissolving, on March 22nd last, an injunction which had been obtained *ex parte*, on Jan. 2, to restrain the defendants from proceeding under the 8 & 9 Vict. c. 18, to assess the amount of compensation claimed for the injury alleged to be done to the Hill Cottage Farm in their occupation, by reason of the plaintiffs' railway crossing on a level road leading thereto from the village of Streetway. The plaintiffs having refused to pay the sum of 550*l.* which the defendants claimed, pursuant to a notice under the 8 & 9 Vict. c. 18, s. 68, on the ground that no injury could be done to their property, the defendants proceeded under that section, whereupon the plaintiffs filed their bill for an injunction.

By the 8 & 9 Vict. c. 18, s. 68, it is enacted that "if any party shall be entitled to any compensation in respect of any lands or of any interest therein, which shall have been taken for, or injuriously affected by the execution of, the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special act, or any act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of 50*l.*, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and, if such party desire to have the same settled by arbitration, it shall be lawful to him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and, unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement, for that purpose, within 21 days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or, if the party so entitled as aforesaid, desire to have such question of compensation settled by a jury, it shall be lawful for him to give notice, in writing, of such his desire, to the promoters of the undertaking, stating such particulars as aforesaid; and, unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within 21 days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and, in default thereof, they shall be liable to pay, to the party so entitled as aforesaid, the amount of compensation so claimed,

and the same may be recovered by him with costs, by action in any of the Superior Courts." *Rolls and Speed*, in support of the appeal, contended the company should be put in the same condition as when the injunction was granted, which was before the expiration of the 21 days, referring to *North Western Railway Company v. Smith*, 1 Hall & T. 164; 1 M. & G. 216, which had been overruled by *East and West India Docks and Birmingham Junction Railway Company v. Gattke*, 3 M. & G. 155.

J. Parker and Willcock, contra.

The Lord Chancellor, after referring to the *Marquis of Waterford v. Knight*, 11 C. & F. 665, said, that as the plaintiffs had mistaken their rights, and sued in the wrong form, they were not entitled, notwithstanding the mistake in law of the Court, to deprive the defendants, whose remedy under the act had been delayed, of their rights; and, besides, the plaintiffs had not explained the lapse of time since the order dissolving the injunction and this motion, and the appeal must therefore be dismissed, with costs.

Rolls' Court.

Norris v. Wright. July 23, 24, 1851.

TRUSTEES.—LIABILITY OF FOR BREACH OF TRUST IN RESPECT OF IMPROVIDENT INVESTMENT OF TRUST FUNDS.

Under a will, trustees of a fund for the plaintiff were empowered to invest on security of real estate in England or Wales, with her consent, and under a settlement on the marriage of the plaintiff similar trusts were created, and the same trustees with J. empowered to invest the fund on securities of real estate in Great Britain or Ireland, with the consent of the plaintiff and her husband. The trustees under the will invested under Mr. Lynch's Act on a mortgage of real estates in Ireland, but without the plaintiff's consent obtained in writing, and the trustees under the settlement invested on security of real estates in England which were heavily incumbered, but with the consent in writing of the husband and wife. Both securities proving insufficient, the trustees were ordered to replace the trust funds by investment in consols to the amount the trust moneys would have purchased at the time of the improvident investment.

UNDER the will of William Hawes, Mrs. Margaretta Norris, the wife of the defendant, William Thomas Norris, was entitled, for her separate use for life with remainder to her children, to one-third of the real and personal estate, of which the defendants, John Wright and William Norris, were appointed trustees, and they were empowered, with her consent, to invest the trust funds in real security in England or Wales. By a settlement of the 6th November, 1838, executed upon the mar-

riage of Mr. and Mrs. Norris, other funds were settled upon similar trusts, but the trustees, who were John Wright, William Norris, and Edward William Jerningham, were empowered to invest, with the consent of Mrs. Norris and her husband, on security of real estates in Great Britain or Ireland. It appeared that a portion of the funds under the will had been invested in real estates in Ireland under Mr. Lynch's Act, upon the Master, to whom the matter had been referred, reporting that it would be for the benefit of the plaintiff and the parties interested for such investment to be made, but the plaintiff's consent in writing had not been obtained, and the security afterwards turned out insufficient, as also did certain property in Northumberland on which the trustees of the settlement had advanced some of the funds with the consent of the husband and wife, notwithstanding there were two large prior charges thereon.

This bill was filed for an account of the several moneys forming the trust funds under the will and under the settlement, and for the trustees to replace the sums which they had advanced improvidently and in breach of the trusts.

R. Palmer and Bigg for the plaintiffs; Walpole, Cooper, Cooke, and Riddell for the defendants.

The Master of the Rolls said that the trustees of the will must purchase so much stock as the amount lent on the Irish security would have purchased if it had been invested in consols instead of on a mortgage; and also the trustees of the settlement, having advanced some of the trust funds on mortgage without a sufficient security, although with the consent of the husband and wife, must be directed to replace them in the same manner from the time when the advances were made, and a reference was directed for an account as to payments by the trustees to the plaintiff which were to be allowed.

Vice-Chancellor Knight Bruce.

Matthews v. Pincombe. June 28, 1851.

CLAIM.—INTEREST ON LEGACY.—LEAVE TO FILE.

A motion was granted with costs, to take off the file a claim, filed without leave, for the payment of certain arrears of interest on a legacy which had been omitted to be taken upon a former claim for payment of the legacy, and in which the decree was by consent.

THIS was a claim under the Orders of April, 1850, on behalf of a legatee for payment of interest for nine years, which had elapsed since the testator's death, upon a legacy of 100*l.* It appeared that in a former claim which had been filed, the plaintiff had taken a decree by consent, but had inadvertently taken interest only from the time she had attained 21, whereas, under the will she was entitled to interest from the testator's death.

A. Smith in support; Southgate, contra, on

the ground, leave should have been obtained before filing the claim.

The Vice-Chancellor said, that the claim must be taken of the file with costs as it was of a special nature, and not a supplemental or a legatee's claim within the meaning of the Orders. If, however, the defendant did not object, the claim might now be considered as having been filed with leave, the plaintiff paying the costs of the defendant's motion, and the usual administration accounts would be directed, or as it was sworn the estate was insufficient, the claim might be dismissed without costs.

Vice-Chancellor Lord Cranworth.

In re Gloucester, Chepstow, and Forest of Dean Junction Railway Company. July 7, 19, 1851.

WINDING-UP ACT.—APPEAL FROM ORDER.—PETITION PRESENTED TOO LATE.

An order was made on Jan. 25, 1850, to wind up a railway company on the petition of a party whose interest in the concern was very small and there was a doubt whether he had not received the return of a portion of what he had paid in lieu and full satisfaction of all demands. A petition to discharge such order on behalf of the directors was refused, with costs, as being too late, an official manager having been appointed and expenses incurred in the winding up; and the Court refused to look at the title of the petitioner for the winding up.

THIS was a petition on behalf of the directors in the above company to dismiss an order which had been made on the 25th Jan., 1850, upon the petition of George Mann for the winding up of the affairs of the company.

Stuart and Terrell in support on the ground that Mr. Mann had no right to obtain the order as there was only 7*l.* due to him in respect of his 10 shares, and also that he had received the 14*l.* which had been returned in lieu and full satisfaction of all demands.

Bethell and Glasse contra.

The Vice-Chancellor said, it was unnecessary to enter into the merits of the case, inasmuch as the petitioners had not interfered when it was first known the winding-up order had been obtained, but had allowed the matter to go on and an official manager to be appointed and certain expenses incurred, and the petition would therefore be dismissed with costs.

Vice-Chancellor Turner.

Richards v. Richards. July 11, 1851.

BEQUEST.—PER CAPITA.—WILL.—CONSTRUCTION.

Bequest of stock among "the children of my brother John's and my brother Samuel's families, share and share alike." Held, a bequest among all the children per capita.

In this case a question arose as to the con-

struction of a bequest by the testator of certain stock which was directed "to be divided between the children of my brother John's and my brother Samuel's families, share and share alike."

The Vice-Chancellor held, that the words were merely a description of the children who were to take, and that the children of both brothers were entitled to have the stock equally divided among them *per capita*.

Court of Queen's Bench.

Regina v. Justices of Newbury. June 10, 1851.

PAVING-RATE.—WARRANT OF DISTRESS.—JUSTICES ADJUDICATING ON SUMMONS.—COSTS.

Where justices, in pursuance of a mandamus to hear and adjudicate upon a summons, issued on behalf of local paving commissioners, for nonpayment of a paving-rate, on objections being taken by the party charged therewith, after considering the question, but without giving any reasons, said, they did not feel themselves justified in granting their warrant of distress, and the time for appeal under the local act had elapsed, the Court made absolute with costs a rule on the justices to issue their warrant.

THIS was a rule nisi granted on May 30 last, on the defendants, to issue a distress warrant to enforce the payment of a paving-rate, amounting to 5*l.* 2*s.* 6*d.*, assessed upon the Rev. Dr. Binney, on July 3, 1849, by the Commissioners, in pursuance of the local act for lighting, paving, and cleansing the borough of Newbury, or for a mandamus to issue their warrant. It appeared that a rule had been made absolute on May 12 last for a mandamus on the defendants, to hear and adjudicate on the summons issued on behalf of the collector, Mark Willis, for nonpayment of the rate, and that the defendants, on May 17, assembled in obedience thereto, when upon the objection of Dr. Binney as to the validity of the rate, they, without giving any reasons said, they did not feel themselves justified in issuing a warrant of distress.

Hawkins now showed cause against the rule; *Whateley*, Q. C., and *Bras*, were not called on in support.

The Court said, that if the defendants had decided the case, this Court would not have interfered, but as they had declined to act on the only question before them, and the time of appeal under the local act against the rate had gone by, the rule must be made absolute with costs.

Court of Common Pleas.

Furnell and another v. Crawley and another. June 16, 21, 1851.

COUNTY COURTS' EXTENSION ACT.—APPEAL WHERE NO JURY.—STATUTE OF LIMITATIONS.

Queste, whether an appeal lies under the 13

& 14 Vict. c. 61, s. 14, where neither party claimed a jury but left the matter for the decision of the judge.

In a letter which was relied on to prevent the operation of the Statute of Limitations, one of the defendants stated that they could not pay the amount due in cash, and never could, but that the plaintiffs might pay themselves by goods which the defendants had at a warehouse, held, not to be an acknowledgment within the statute as it did not contain any promise to pay, but merely stated the defendants' inability to pay, and that the offer of the goods in satisfaction of the debt could only be looked upon as conditional upon the plaintiffs' accepting the offer, and, on appeal from the judge of a County Court, this Court ordered judgment for the defendants with costs.

THIS was an appeal under the 13 & 14 Vict. c. 61, s. 14, from the decision of the learned judge of the Dorsetshire County Court, held at Poole, giving judgment for the plaintiffs in this action which was brought to recover the balance of a debt due to the plaintiffs for goods sold and delivered to the defendants in 1849.

The defence set up was the Statute of Limitations, and a letter was produced dated in April, 1845, in which one of the defendants said that they were unable to pay the amount due in cash and never could pay it, but that the plaintiffs might pay themselves in goods which they had at the Pantechmicon. The action was tried without the intervention of a jury.

The 13 & 14 Vict. c. 61, s. 14, provided, that "if either party, in any cause of the amount to which jurisdiction is given by the act, shall be dissatisfied with the determination or direction of the said Court in point of law, or upon the admission or rejection of any evidence, such party may appeal to any of the Courts at Westminster, for which purpose two or more of the Puisne Judges shall sit out of Term, as a Court of Appeal, provided each party shall, within 10 days after such determination or direction, give notice of such appeal to the other party or his attorney, and give security for the costs of the appeal, whatever may be the event, and for the amount of the judgment if he be defendant, and the appeal is dismissed, except in any case where the judge shall have ordered the appealing party to pay the same into the hands of the clerk or treasurer; and the said Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of such appeal as the Court may think proper; and such orders shall be final."

Udall for the appellants.

Barstow and *Willes* objected, on behalf of the respondents, that an appeal did not lie where the parties did not either of them require a jury but left the matter, both as to law and fact, to the determination of the judge.

The Court, (per *Maule* and *Talfourd*, JJ.) said, that there was a doubt whether there was

in appeal under the 14th section of the act where the parties did not choose to separate law and fact, but left the judge to determine both, and thereby placed him in the position of an arbitrator whose award was final; but that, as upon a fair consideration of the case, the Court entertained an opinion in favour of the appellants in point of law, inasmuch as the letter did not contain any promise to pay, but merely stated the defendants' inability to do so, and the offer of goods in satisfaction of the debt could only be regarded as conditional on the plaintiffs' acceptance of the offer, the judgment must be entered for the defendants with costs.

Court of Exchequer.

Hart v. Bazendale and others. Jan. 18, June 30, 1851.

COMMON CARRIERS.—LOSS OF GOODS.—LIMITATION OF LIABILITY.—NOTICE.

The carman of common carriers having received a box containing certain masquerade dresses, &c., all of which were not strictly within the articles for which, without notice, they were liable under the Carriers' Act, without any special notice from such carman to the customer limiting his employers' liability, and the box was lost or stolen: Held, making absolute a rule nisi to set aside the verdict for the defendants, and enter it for the plaintiff, that the placing up at the office at which goods were received of a notice limiting the liability of the carriers in respect of certain articles, did not amount to such an actual or constructive notice of the limitation of the liability where the goods were received elsewhere than at such office to do away with their ordinary liability as common carriers for goods entrusted to them.

A RULE nisi had been obtained in this action to set aside the verdict for the defendants and enter it for the plaintiff, with 165*l.* damages, or for a new trial. The action was brought on the case by the plaintiff, an army clothier, against the defendants, Pickford & Co., as common carriers, to recover the value of certain goods, consisting of sets of Scotch masquerading dresses which had been entrusted to the defendants' carman to deliver at Liverpool, and the box having been lost or stolen this action was brought. On the trial, it appeared that no notice had been given that the goods were within the articles excepted under the Carriers' Act, and under the direction of L. C. B. Pollock, who presided, and was of opinion that the notice put up at the chief office was a sufficient notice to the owners of goods delivered elsewhere to limit their liability, the jury found a verdict for the defendants.

Peacock and Wiles showed cause against the rule, which was supported by *M. Chambers, Bromwell, and C. Pollock.*

The Court, (dissentient *Pollock, L. C. B.,*) after taking time to consider, said that the

plaintiff was entitled to recover, as he was entitled to notice, either actual or constructive, of the carriers' intention to limit their liability under the act, and it was open to their servant, when receiving goods elsewhere than at the office, to make a special contract by giving a verbal notice to limit their liability, and such contract not having been made, the ordinary liability must attach to the defendants as common carriers, upon the loss of the goods entrusted to them.

Court of Exchequer Chamber.

Buchanan v. Kinning. May 15, June 3, 1851.

ACTION FOR ASSAULT AND FALSE IMPRISONMENT.—PLEA SETTING OUT ORDER OF COMMITMENT OF INFERIOR COURT.—SUFFICIENCY OF.

The plea to an action in trespass for an assault and false imprisonment justified under the 8 & 9 Vict. c. 127, and after reciting that a judgment had been recovered against the defendant in error in the Sheriffs' Court, stated that a notice had been duly served on the defendant in error for having neglected to pay the damages and costs thereunder recovered, that he had appeared and that the judge of the Inferior Court had made an order for payment of the amount by instalments, and upon proof of an instalment being unpaid, had made a further order directing him to be imprisoned for 40 days, and on the application of the plaintiff in error, who was the attorney to the plaintiff in the action in the Inferior Court, had issued a warrant for his commitment under which he was imprisoned. On the trial the order of commitment was produced which corresponded with the plea but did not recite the previous summons, upon which the judge who presided directed the jury to find for the defendant in error. The Court, on a bill of exceptions, directed a venire de novo.

THIS was a bill of exceptions to the ruling of the late Mr. Justice Colman in an action of trespass for an assault and false imprisonment. It appeared that the defendant in error having been sued by one Townley in the Sheriffs' Court of London, was ordered to pay the debt and costs by monthly instalments of 2*l.* each, and that upon his not paying such instalment the judge ordered him to be imprisoned under the 8 & 9 Vict. c. 127, for 40 days. The plea justified under that act and after reciting the recovery of the judgment in the Sheriffs' Court, and that a notice had been duly served upon the defendant in error for his neglect in paying the damages and costs awarded thereunder, stated that the defendant in error had appeared, and that the judge had made an order on him for the payment of the amount by instalments, and, upon proof of an instalment being unpaid, had subsequently made a further order directing his imprisonment for 40 days, and upon the application of the

present plaintiff in error, who was the attorney for Townley, had issued a warrant for his commitment, under which he had been taken in custody and imprisoned. The order of commitment was produced on the trial and corresponded with the plea, with the exception that it did not contain the recital of a previous summons on the defendant in error to show cause why he should not be committed to

prison. The learned judge having directed the jury to find for the defendant in error on that issue, this bill of exceptions was tendered.

Bramwell, for the plaintiff in error; *Parkley* and *Henniker*, for the defendant.

Our ad. vall.

The Court held, that the decision of the learned judge was erroneous, and directed a *venire de novo*.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

EVIDENCE.

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lunacy, p. 147.

Courts of Equity:

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, pp. 204, 246, 265.

Law relating to Trustees, p. 285.

Evidence, p. 306.]

PRIVILEGED COMMUNICATIONS.

1. *Books and documents*.—*L.*, a resident at Quebec, brought an action of trover against *R.*, to recover the amount of certain insurance monies received by *R.* in respect of a ship that had been wrecked; whereupon *R.* filed his bill against *L.* and his partner, and the mortgagee of *L.*, to restrain proceedings in the action, on the alleged ground that the ship was the property of *L.* and his partner, who became indebted to *R.* in a large balance on a mutual account, in respect of which *R.* claimed to retain the monies so received by him by way of set-off. *L.*, in his answer to the bill, stated, that, in the first part of the schedule, he had set forth certain books and documents belonging to the firm of *L.* and his partner, and not to the defendant *L.* alone, and in the joint possession of *L.* and his partner, but which partnership had since been dissolved. A motion by *R.*, for production for the usual purposes of those books and documents, was refused.

L., in the same answer, also claimed, as privileged communications, certain "letters from the defendant *L.* to *R.* and *B.*, his agents in England, to be communicated by *R.* and *B.* to Messrs. *W.* and *M.*, the legal advisers of the defendant in England." Held, that the defendant was not bound to produce the same for the plaintiff's inspection. *Reid v. Langlois*, 2 H. & T. 59; 1 M'N. & G. 627.

Cases cited in the judgment: *Murray v. Walter*, Cr. & Ph. 114; *Taylor v. Rundell*, 1b. 104.

2. *Trustee and cestui que trust*.—Case and opinion submitted and taken by trustees in contemplation of the litigation, held privileged as against the *cestui que trust*. *Brown v. Oakshott*, 12 Beav. 252.

3. *Letters alleged by a defendant to have passed between him and his solicitor*, in the course of and for the purposes of professional business which the solicitor was employed to transact for him; and a case alleged to have been professionally and confidentially submitted to counsel by the solicitor of the defendant and on his behalf, and the opinion thereon, held not to be privileged. But a case alleged to have been submitted to counsel by the defendant's solicitor, in contemplation of legal proceedings and with reference to the title of the defendant at issue in the present suit, and the opinion thereon, held to be privileged. *Beadon v. King*, 17 Sim. 34.

4. *Fraud*.—A bill impeached a deed on the ground of fraud, and interrogated the defendant as to the contents of certain letters which had passed between her and her solicitor, and which, it stated, showed that the deed was prepared and executed for the alleged fraudulent purpose. The defendant, in her answer declined to set forth the contents of the letters, as being privileged communications. The Court held that the transaction, according to the account of it given in the bill and answer, was not a fraud; and, therefore, that the defendant was not bound to set forth the contents of the letters.

Communications between a solicitor and his client relative to a fraud contrived between them, are not exceptions to the general rule; they do not fall within the rule itself; for the rule applies, not to all that passes between a solicitor and his client, but only to what passes between them in professional confidence; and no Court can permit it to be said that the contriving of a fraud forms part of the professional occupation of an attorney or solicitor. *Follett v. Jefferyes*, 1 Sim. N. S. 3.

5. *Husband and wife*.—*A.* being desirous to sell an estate on which his wife's jointure was secured, she and her trustees released the estate from her jointure, and he covenanted to secure it on such estates as he might thereafter acquire. He afterwards purchased another estate, but declined to perform his covenant. Whereupon she filed a bill to compel him to

perform is, charging that she entered into the aforesaid arrangement, under the advice of her husband's solicitor and counsel, and without having any other legal advice, and charging also that the solicitor, who was made a co-defendant, had in his possession cases for the opinion of counsel and the opinions thereon, and other documents relating to the matters mentioned in the bill. The husband and his solicitor admitted these charges, but added that the cases and opinions came into and were in the solicitor's possession, as the husband's solicitor; and the husband said that the cases were laid before counsel, on his behalf and by his direction, and not on behalf or by the direction of any other person. A motion, on the wife's behalf, for the production of the cases and opinions and of certain letters which had passed between the husband and his solicitor, and which he alleged to be confidential communications, was refused. *Warde v. Warde*, 1 Sim. N. S. 18.

6. A defendant admitted that he had in his possession documents relating to the matters in the bill, but refused to set forth a list of them because they had been procured by his solicitor since the institution of the suit and for the purpose of his defence to it, and the same were, as he was advised and insisted, confidential communications.

Held, that the allegation relating to the documents did not justify the defendant's refusal to set forth a list of them; and, therefore, that his answer was insufficient. *Balguy v. Broadhurst*, 1 Sim., N. S., 111.

7. A. purchased an advowson in June, 1845, and in August following mortgaged it to B. In 1850, B. filed a bill against A. and the solicitor employed by him in the purchase and the mortgage, for a sale of the advowson, alleging that the mortgage was an insufficient security; and that he was induced to lend his money upon it by misrepresentations made to him by A. and his solicitor, as to the value of the advowson. A., in his answer, denied the alleged fraud; but admitted that he had in his possession letters which had passed between him and his solicitor, in reference to the purchase and the mortgage, and added that they were confidential communications made to him by his solicitor in that character, and, therefore, were privileged; but he did not state that any of them contained legal advice or opinions, or were written *post litem motam*.

The Court ordered him to produce all the letters. *Hawkins v. Gathercole*, 1 Sim. N. S. 150.

Case cited in the judgment: Lord Walsingham v. Goodricke, 3 Hare, 192.

8. The answer, after denying the title of the plaintiffs, set forth a schedule of documents in the possession of the defendants, which it admitted related to the matters mentioned in the bill; but it denied that, by those documents, the truth of such matters would appear to be otherwise than as stated in the answer; and it submitted that the defendants ought not to be ordered to produce the documents, and, in ad-

dision, that certain of the letters mentioned in the schedule ought not to be produced in this or any other suit, inasmuch as they were written either pending or in contemplation of the litigation in this suit, and with reference to the matters in this suit brought into controversy, and were written to one of the defendants from his solicitor, or from an attorney who had been employed by him in a suit instituted by him in the Lord Mayor's Court, to which the bill related, to the solicitors of that defendant, or from one of the defendants to another of them, for the purpose of being communicated to the solicitor of the latter, with a view to his defence in this litigation.

Held, that such of the first class of letters as were written to the defendants by their solicitors, in that character merely, were privileged, but that all the other documents and letters ought to be produced. *Goodall v. Little*, 1 Sim. N. S. 155.

Case cited in the judgment: *Hughes v. Biddulph*, 4 Russ. 190.

PRODUCTION OF DOCUMENTS.

1. *Principal and agent*.—During a revolution in Sicily, the revolutionary government sent two of the defendants, who were natives and inhabitants of Sicily, as envoys to this country, and afterwards remitted to them moneys, which had been contributed by many thousands of the inhabitants of Sicily, with directions to purchase a steam-ship therewith; and the defendants applied the moneys accordingly. The lawful sovereign of Sicily, after he had re-established his authority, filed a bill, claiming the ship, which still remained in the port of London. The defendants, in their answer, admitted the possession of documents relating to the matters in the bill, but said that they held them as the agents and on behalf of the persons who entrusted them with the moneys, and submitted that, in the absence of such persons, they ought not to be ordered to produce such documents.

The Court, however, made the order, because the plaintiff represented the contributors of the moneys; and the revolutionary government being at an end, the defendants had either ceased to be agents or trustees for any one, or had become agents or trustees for the plaintiff. *King of the Two Sicilies v. Willcox*, 1 Sim. N. S. 301.

2. *Penalties*.—A defendant, a foreigner sojourning in this country, declined to produce documents, because they would expose him to criminal prosecution in his own country, but the Court made the order. *King of the Two Sicilies v. Willcox*, 1 Sim. N. S. 301.

3. *Executors—Admission*.—An order for production cannot be made against an executor upon admissions in his testator's answer. *Scott v. Wheeler*, 12 Beav. 366.

4. *Title-deeds*.—A suit was instituted by a *cestui que trust*, to set aside a sale by trustees to their solicitor. The solicitor submitted to give up the purchase on repayment. He admitted the possession of the title-deeds, but

resisted their production, unless the plaintiff consented to repay the purchase-money, saying that the title was bad, and that the plaintiff would have the power, as he had the inclination, to expose the title, in case he abandoned the suit: *Held*, that the solicitor was bound to produce the deeds. *Shallcross v. Weaver*, 12 Beav. 272.

5. *Restriction of order for.*—On motion for production, the defendant asked that the plaintiff might be prevented using them for any collateral purposes, alleging that there were proceedings at law pending. The Court, however, declined so to restrict the order. *Fagg v. South Devon Railway Company*, 12 Beav. 151.

6. *Injunction.*—Injunction granted, before answer, to restrain defendants from parting with documents in their possession, belonging to the plaintiff, and from preventing the plaintiff and her solicitor from having access to the documents at all reasonable times and after reasonable notice. *Goodale v. Goodale*, 16 Sim. 316.

7. *Title deeds.*—A bill was filed by a *cestui que trust*, against the purchaser of real estate from trustees, to set aside the conveyance on the ground of inadequate consideration. The purchaser insisted that the consideration was sufficient, because the title was defective, but offered to reconvey the estate on repayment, and on payment of expenses in improvements and repairs. He admitted that he had possession of the title deeds: *Held*, that he was bound to produce them. *Shallcross v. Weaver*, 2 H. & T. 231.

8. Where it is charged by a bill that the defendants have in their possession documents which relate to the matters aforesaid, that is, the plaintiff's title, (amongst other things) it is not sufficient for the defendants, with a view to excusing their production, simply to state their belief that such documents do not contain evidence of, or tend to show, the plaintiff's title; but they must, in distinct terms, negative the grounds on which the plaintiff asks for their production.

Observations on the passages contained in *Mitford on Pleadings in Equity*, p. 150, 5th edit.; and *Wigram on Discovery*, p. 285, 2nd edit. *Attorney-General v. Corporation of London*, 2 H. & T. 1; 2 M'N. & G. 247.

Cases cited in the judgment: *Jones v. Davis*, 16 Ves. 262; *Evans v. Harris*, 2 V. & B. 361; *Harland v. Emerson*, 8 Bli. 62; *Stroud v. Deacon*, 1 Ves. S. 27; *Jerrard v. Saunders*, 2 Ves. J. 187.

9. One of several defendants by his answer admitted the possession of documents, but by an affidavit subsequently filed stated, that since his answer he had deposited them with one of his co-defendants. A motion for their production refused in the absence of the co-defendant. *Burbridge v. Robinson*, 2 M'N. & G. 244.

10. *Chemical tests.*—A suit was instituted to restrain proceedings at law to recover for work and labour in constructing a sewer, on the ground of fraud on the part of the defendant in equity, in improperly obtaining possession

of an estimate in writing, and by chemical process removing the figures indicating the price. The document in question having been deposited with the clerk of records, in pursuance of an order for production, the plaintiff moved for liberty to subject it to chemical tests, for the purpose of the trial at law, upon an undertaking by the defendant to produce it to be stamped at the trial at law. The Court refused to make any order. *Twentyman v. Barnes*, 2 De G. & S. 225.

11. *Witness withholding.*—Although a witness cannot refuse to produce documents on the ground that they will not be evidence between the parties, the Court may take the circumstances into consideration, and will not order the witness to produce them, unless it is probable that the documents may be used in evidence. *Phelps v. Prothero*, 2 De G. & S. 274.

12. *Answer, how to be read on motion.*—On a motion for production of documents set forth in an answer, or to pay money into Court, the plaintiff will not be allowed to rely on an insulated passage in the answer, but must take the whole case as it is found in the answer. *Reid v. Langlois*, 2 H. & T. 59.

13. *Interest of third parties in books.*—Where executors and trustees by their answer admitted six books to be in the custody or power of their agent in Scotland, where part of the testator's property was, and the agent, on a motion for production, deposed that he was agent for many other persons, and that his books related to the affairs of such other persons as well as to those in question in the cause: *Held*, that the executors had not thereby so mixed the testator's accounts with others as to preclude them from insisting that the books were not in their power; and a motion for production was refused as to these books. *Airey v. Hall*, 2 De G. & S. 489.

14. *Assignment of lease.*—*Waiver.*—An agreement, signed by A. and B., for the sale by A. and purchase by B. of the fixtures in a lease at a certain price, and that A. shall execute an assignment of his interest in the house to B., to bear date on a certain day: *Held*, to be a contract by B. to take such assignment when executed; and B. having inspected the lease, and the assignment to A., and subsequently directed A. to cause an assignment to him, B., to be indorsed *totidem verbis*, it was held that B. was precluded from calling for the lessor's title. *Smith v. Capron*, 7 Hare, 191.

Case cited in the judgment: *Cosser v. Collinge*, 3 My. & K. 283.

15. *Subpoena duces tecum.*—*Hearing.*—A person served with a subpoena duces tecum, under the General Order XXIV, of May, 1845, to produce a document at the hearing of the cause, may, at such hearing, he called upon his subpoena, and asked whether he produces the document, and if he declines to produce it, why he so declines, or other like questions confined to the mere purpose of production. *Griffith v. Ricketts*, 7 Hare, 301; *Same v. Lennell*, ib. 301.

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ARREST OF ABSCONDING DEBTORS' ACT.

THE law governing the arrest of debtors before judgment, was, previously to the passing of the act 14 & 15 Vict. c. 52, [printed in our last number, p. 313,] regulated exclusively by the act 1 & 2 Vict. c. 110. That statute, which effected numerous and extensive alterations in the Law of Debtor and Creditor, amongst other things, restricted the power of holding to bail to cases where a judge of the Superior Courts, upon being satisfied by affidavit that the debtor was about to quit the country, thought fit to order a bailable writ to issue, under which an arrest was permitted. As might have been expected, from the scope and character of the various alterations effected by the act abolishing imprisonment for debt upon mesne process, its provisions have proved practically defective in various particulars. Before the passing of that act, if a creditor had reason to believe that his debtor was about to quit the country, he might obtain a writ of *capias* as a matter of course, upon filing an affidavit of debt, and without loss of time arrest the fugitive. No doubt this system was open to abuse and was occasionally abused. The legislative remedy applied to the evil, however, opened a wide door for mischief of another description. Fraudulent debtors are at least as numerous as oppressive creditors. It has sometimes happened that a creditor has had notice that his debtor was about to abscond, taking with him property fully adequate to pay a portion, at all events, of his debts; but before the necessary process could be obtained for the detention of the fugitive, he was beyond the jurisdiction of the Courts, and justice was defeated. Unless during the Circuits, the application for an order to hold to bail must always have

been obtained in London, and the delay inevitably incurred by instructing the town agent to obtain the order, issue the writ, and transmit it into the country for execution, frequently afforded ample time for the escape of the debtor. The inhabitants of the Counties Palatine of Lancaster and Durham were also placed in a peculiarly unfavourable position in reference to the arrest of absconding debtors. The arrest of debtors in these counties upon mesne process was regulated by the act 7 & 8 Geo. 4, c. 71, which was not repealed by the act 1 & 2 Vict. c. 110, and which provided that no sheriff or other officer within the Counties Palatine, should arrest upon mesne process issuing out of the Superior Courts at Westminster, unless the process was marked for bail in a sum not less than 50*l*. The practical effect of this was, that if a person, sued in the Superior Courts for a debt less than 50*l*., at any stage of the proceedings before final judgment, found his way into the County Palatine, he could not be arrested until a fresh writ of summons was issued from the Court of the County Palatine, and a fresh order for a *capias* obtained from a judge in London. The plaintiff, adopting this course, had to forego the expense of all the proceedings taken in the Superior Courts at Westminster, which perhaps included the costs of suing out writs into several counties. Practically, therefore, in those cases, the power of arresting an absconding debtor could scarcely be said to exist; and in all cases where the parties were resident at a distance from the metropolis, the chances that the debtor might effect his escape before the arrival of the process authorizing his detainer were proportionably increased. The facilities of transit, afforded by railways and steam navigation, have recently materially aggravated the inconvenience arising from the

existing state of the law, and no doubt suggested the recent change.

The act which obtained the Royal Assent at the close of the bygone Session is intended to remedy an acknowledged evil, its provisions are exclusively directed to the single purpose of providing a more expeditious and efficacious process for the arrest of debtors about to quit England, and there is good reason to hope that these provisions will be found effectual.

By the new act, no person will be liable to be arrested who would not have been by law liable to arrest before the passing of this act; but, instead of confining the power to order an arrest to the Judges of the Superior Courts, who are necessarily resident in London for ten months of the twelve, the power is extended to the Commissioners of the Court of Bankruptcy acting in the country, and to the County Court Judges, acting in any of the counties *except* Middlesex and Surrey. Perhaps the power might have been safely and conveniently entrusted to the Commissioners of the Court of Bankruptcy sitting in London, who are not understood to have as many public claims upon their attention as the Judges of the Superior Courts, but it was probably deemed expedient to confine the application of the remedy to those districts where the evil was peculiarly felt. Under the new act, the first process is to be a warrant, the form of which is specified, and which is to be granted only when the Commissioner or judge believes that the debtor is about to quit England to avoid or delay his creditor, or with intention to remain beyond the jurisdiction, so as to delay the creditor in the recovery of his debt. If the warrant be granted by a Bankrupt Commissioner, it will be directed to his messenger, and if by a County Court Judge, to the high bailiff. In either case, the warrant authorises the arrest of the debtor at any time within seven days after its date, and "may be executed in any part of England." A proviso to the 1st sect. enacts:—

"That every creditor who shall cause such warrant to issue shall *forthwith* cause to be issued a writ of *capias*, and also, in cases where no action shall be pending, shall, before the issuing of such writ of *capias*, cause a writ of summons to be issued out of some one of the Superior Courts of Law against such debtor or debtors, and that upon such *capias* all mandates and warrants shall issue according to the practice now in use, notwithstanding that the defendant shall have been arrested by virtue of any warrant or warrants granted by such Commissioner or Judge, and such debtor

or debtors shall, if in custody, be served with such writ of *capias*, within seven days from the date of such warrant, including the day of such date; and thereupon such debtor or debtors shall be considered and deemed to have been arrested by virtue of the said writ of *capias*, and all proceedings shall be had upon such writ of *capias* as if the same had been issued prior to the issuing of such warrant, and the arrest made on such writ of *capias*, and according to the practice now observed in the said Superior Courts of Law."

The meaning of the word "*forthwith*," in the proviso, is not manifest, but we presume, the intention is, that a *capias* is to issue within a reasonable time after the issue of the warrant, and in all cases within seven days after the date of the warrant, for at the expiration of that time, the warrant ceases to afford any authority for the arrest of the debtor. By a subsequent section (s. 3) it is expressly provided, that the warrant shall be auxiliary only to the process now in use, and afford no protection to the person on whose behalf it issued, unless the *capias* has been issued and served as already mentioned. The production of the warrant, with an indorsement of the time and place where the debtor was arrested, is to be a sufficient authority to the sheriff or keeper of the county gaol, to detain the debtor until he has been discharged by due course of law; but we find no provision in the act authorising the issue of the writ of *capias* upon production of the warrant. It is to be presumed, therefore, that the legislature intended, that after the arrest of a debtor upon a warrant granted by a Commissioner or County Court Judge, the application for an order must be made, as at present, to one of the Judges of the Superior Courts, as it is only upon such an order that a *capias* can issue. Should the Judge in town be of opinion that the warrant has been improvidently granted, he would probably refuse the order, and in that event, under sect. 3, already referred to, the person on whose behalf the warrant issued would be left without protection. If this be the operation of the act, we are apprehensive that it will create some dissatisfaction, as it is, to say the least, possible, that two judges may differ as to the sufficiency of the materials laid before them, and the creditor acting *bond fide* be placed in peril by reason of a difference of opinion which he could not anticipate. The application to two judges, also, the one to grant a warrant and the other to make an order for the issue of a *capias*, must necessarily be attended with an increase of expense which should

have been avoided. It is provided by sect. 10, that the costs of the warrant and arrest thereon are to be deemed costs in the cause, with the condition that no such costs are to be allowed, unless the Court, or the proper officer, is satisfied that the plaintiff had reason to believe that the defendant could not have been arrested, if the application had been made in the first instance to a Judge of the Superior Courts. It may be questioned, whether the urgency of the application might not be determined more conveniently by the Commissioner or Judge to whom the application is made in the first instance. If he deems the case one that is proper for his interference, it is inconvenient to have its expediency questioned before the Taxing Master at a subsequent stage, and, perhaps, after the lapse of a considerable period. We readily admit, however, that these are but slight imperfections, and that the measure taken as a whole must be regarded as useful and practical.

It is expressly provided by sect. 5, that any person arrested under the warrant of a Commissioner of Bankrupt or County Court Judge, may forthwith, and before the issuing of a *capias*, procure his discharge by payment of the debt and costs to the messenger or bailiff, or by entering into a bail bond with two sureties for the amount, or by a deposit of the sum endorsed on the writ and 10*l.* for costs. For the protection of persons against whom a warrant may be granted improperly, and upon a statement of facts which turns out to be unfounded, it is further provided, by sect. 8, that,

“It shall be lawful for any person for whose arrest a warrant shall have been granted to make application, either before or after arrest shall have been made by virtue of the said warrant, and before a writ of *capias* shall have been issued as aforesaid, to any Commissioner of Bankrupt, or County Court Judge as aforesaid, or to any Judge of the said Superior Courts, or to the Court mentioned in the affidavit of debt or warrant for the arrest, for a summons or rule calling upon the creditor who shall have obtained such warrant to show cause why the warrant should not be set aside and vacated, if such application shall be made before arrest, or why the debtor should not be discharged out of custody, if the application should be made after arrest, and that it shall be lawful for such Commissioner or Judge or Court to make absolute or discharge such summons or rule, and direct the costs of the application to be paid by either party, or to make such other order therein as to such Commissioner, Judge, or Court shall seem fit; provided that any such order made by a Judge

may be discharged or varied by the Court, on application made thereto by either party dissatisfied with such order.”

It will be noticed that under this section the debtor, dissatisfied with the issue of a warrant for his arrest, may apply, not only to the Commissioner or Judge, by whom the warrant has been granted, but to any other Commissioner or Judge, for a rule, calling upon the creditor to show cause why the warrant should not be set aside, or the debtor discharged from custody; and there is no restriction in the act against a repetition of such applications to different Commissioners or Judges. Instances may be readily conceived where the license to renew applications of this description might be exercised to the manifest oppression and vexation of the creditor; but this defect in the act may be remedied if the learned functionaries, to whom power is given to issue a warrant, will act upon the principle of refusing to entertain a second application unless made upon fresh materials.

It is to be observed, that the act under consideration has no further application to the County Courts, than that under its authority the Judges of those Courts, in common with the country Bankrupt Commissioners, have the power to grant a warrant to arrest, upon being satisfied that the debtor is about to leave the kingdom. The action to which the proceeding by arrest is only auxiliary, must in every instance be brought and proceeded with in the Superior Courts:—a provision which does not well afford any just ground of complaint.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

ECCLESIASTICAL TITLES ACT.

14 & 15 VICT. c. 69.

Briefs, rescripts, or letters apostolical declared unlawful and void; s. 1.

Persons procuring, publishing, or putting in use any such brief, &c., for constituting archbishops, bishops, &c., of pretended provinces, sees, or dioceses, liable to a penalty of 100*l.* for every offence; Recovery of penalties; s. 2.

Act not to extend to bishops of the Protestant Episcopal Church in Scotland; s. 3.

Nothing to affect provisions of 7 & 8 Vict. c. 97; s. 4.

The clauses of the act are as follow:—

An Act to prevent the Assumption of certain Ecclesiastical Titles in respect of Places in the United Kingdom. [1st August, 1851.]

Whereas divers of her Majesty's Roman Ca-

tholic subjects have assumed to themselves the titles of archbishop and bishops of a pretended province, and of pretended sees or dioceses, within the United Kingdom, under colour of an alleged authority given to them for that purpose by certain briefs, rescripts, or letters apostolical from the See of Rome, and particularly by a certain brief, rescript, or letters apostolical purporting to have been given at Rome on the 29th of September, 1850: And whereas by the act of 10 G. 4. c. 7. s. 24, after reciting that the Protestant Episcopal Church of England and Ireland, and the doctrine, discipline, and government thereof, and likewise the Protestant Presbyterian Church of Scotland, and the doctrine, discipline, and government thereof, were by the respective acts of Union of England and Scotland, and of Great Britain and Ireland, established permanently and inviolably, and that the right and title of archbishops to their respective provinces, of bishops to their sees, and of deans to their deaneries, as well in England as in Ireland, had been settled and established by law, it was enacted, that if any person after the commencement of that act, other than the person thereunto authorized by law, should assume or use the name, style, or title of archbishop of any province, bishop of any bishopric, or dean of any deanery, in England or Ireland, he should for every such offence forfeit and pay the sum of 100*l.*: And whereas it may be doubted whether the recited enactment extends to the assumption of the title of archbishop or bishop of a pretended province or diocese, or archbishop or bishop of a city, place, or territory, or dean of any pretended deanery in England or Ireland, not being the see, province, or diocese of any archbishop or bishop or deanery of any dean recognised by law; but the attempt to establish, under colour of authority from the See of Rome or otherwise, such pretended sees, provinces, dioceses, or deaneries, is illegal and void: And whereas it is expedient to prohibit the assumption of such titles in respect of any places within the United Kingdom: Be it therefore declared and enacted that,

1. All such briefs, rescripts, or letters apostolical, and all and every the jurisdiction, authority, pre-eminence, or title conferred or pretended to be conferred thereby, are and shall be and be deemed unlawful and void.

2. And be it enacted, That if, after the passing of this act, any person shall obtain or cause to be procured from the bishop or See of Rome, or shall publish or put in use within any part of the United Kingdom, any such bull, brief, rescript, or letters apostolical, or any other instrument or writing, for the purpose of constituting such archbishops or bishops of such pretended provinces, sees, or dioceses within the United Kingdom, or if any person, other than a person thereunto authorized by law in respect of an archbishopric, bishopric, or deanery of the United Church of England and Ireland, assume or use the name, style, or title of archbishop, bishop, or dean of any city, town, or place, or of any territory or

district, (under any designation or description whatsoever,) in the United Kingdom, whether such city, town, or place, or such territory or district, be or be not the see or the province, or co-extensive with the province, of any archbishop, or the see or the diocese, or co-extensive with the diocese, of any bishop, or the seat or place of the church of any dean, or co-extensive with any deanery, of the said United Church, the person so offending shall for every such offence forfeit and pay the sum of 100*l.*, to be recovered as penalties imposed by the recited act may be recovered under the provisions thereof, or by action of debt at the suit of any person in one of her Majesty's Superior Courts of Law, with the consent of her Majesty's Attorney-General in England and Ireland, or her Majesty's Advocate in Scotland, as the case may be.

3. This act shall not extend or apply to the assumption or use by any bishop of the Protestant Episcopal Church in Scotland exercising episcopal functions within some district or place in Scotland of any name, style, or title in respect of such district or place; but nothing herein contained shall be taken to give any right to any such bishop to assume or use any name, style, or title which he is not now by law entitled to assume or use.

4. Be it enacted, That nothing herein contained shall be construed to annul, repeal, or in any manner affect any provision contained in an act passed in the eighth year of the reign of her present Majesty, intituled, "An Act for the more effectual Application of Charitable Donations and Bequests in Ireland."

NOTICES OF NEW BOOKS.

The Judges of England; with Sketches of their lives, and Miscellaneous Notices connected with the Courts at Westminster from the time of the Conquest. By EDWARD FOSS, F.S.A., of the Inner Temple. Volume IV. Containing the Reigns of Richard II., Henry IV., Henry V., Henry VI., Edward IV., Edward V., and Richard III. 1377–1485. London: Longman & Co. Pp. 501.

RESUMING our notice of Mr. Foss's "*Judges of England*," we shall principally direct our attention to the legal surveys of the several reigns comprised in the Fourth Volume, namely, those of Richard II.; Henry IV., V., and VI.; Edward IV. and V., and Richard III. All these historical chapters are peculiarly interesting in themselves, and form most appropriate introductions to the Biographical Notices of the Judges at each respective era. In that of Richard II., Mr. Foss remarks, that

"A tragic character is given to the legal history of the reign of Richard II. by the murder of two judges, the execution of a third, and

the conviction and banishment of the whole bench (with the exception of one member of it) on charges of high treason. The first two fell victims to the indiscriminate rage of a rebellious mob, led on by Wat Tyler and his associates; and the others suffered, one for introducing, and the rest for submitting to the introduction of, the unconstitutional practice of giving extra-judicial opinions to the sovereign—a practice seldom resorted to but for the purpose of affording an apparent sanction to forced interpretations of doubtful enactments, either oppressive to the people, or stretching the legal prerogatives of the crown. The serious retribution with which the judges were visited on this first occasion, renders it surprising that any others should, in after ages, have been found to incur a similar responsibility: but who can calculate the point to which the subserviency of the weak, the fear of the pusillanimous, or the blindness of the rash, may lead them."

It was in this reign, as the author states, that it would appear the writ of subpoena was introduced into Chancery proceedings by John de Waltham, Master of the Rolls, but some doubt, says Mr. Foss, exists, whether he did more than modify the writ of the previous reign, which was very much of the same description.

From the account of the Masters in Chancery of this reign, we extract the following:—

"Lord Campbell says, that 'the greatest indignation broke forth in this reign against the Masters in Chancery, who were considered overgrown and oppressive sinecurists;' adding, from Hargrave's Law Tracts, 314, that 'in 5 R. II. a complaint was exhibited against them in parliament, that they were over fatt, both in bodie and purse, and over well furred in their benefices, and put the king to verie great cost, more than needed.' I do not find any record of such a complaint in the Rolls of Parliament; but in answer to certain petitions of the Commons in that year, which are given at length, 'the clerks of the Chancery of the two principal degrees' (one of which consisted of the Masters), together with the judges and others, were assigned, upon their oaths, diligently to advise, each degree for itself, of the abuses, wrongs, and defaults practised in their places, and in the Courts of the king, and of the other lords in the realm; and they advised accordingly."

At this time Mr. Foss states, that the sittings of the Court of King's Bench were principally at Westminster, but sometimes at other places, namely, at Coventry and Worcester; and the Common Pleas on one occasion sat at York. In 4 Richard II., the Courts were adjourned "propter insurrectionem, sub conductu Jack Straw et Wat Tyler," and again in the 8th year, on the ramoured invasion of the French and Scots.

"In the reign of Richard II. scarcely any-

thing is to be found illustrative or explanatory of the distinction between the Inns of Court and the Inns of Chancery. But some incidents occurred in it which may be regarded as proving that the Temple was then a place appropriated to the study of the law, notwithstanding the dubious phraseology in which the annalists relate them.

"In the insurrection of Wat Tyler, in June, 1381, the rebels are described in a French chronicle of the time, (followed by Stow.) as going to the Temple to destroy the tenants thereof, and pulling down some of the houses, and taking off the tiles of others; and then, it is added, they 'went to the church, and took all the books and rolls of remembrances which were in their hutches in the Temple of the apprentices of the law, and carried them into the highway, and burnt them.' It will be at once seen that as far as this passage goes, it proves nothing as to the residence of lawyers in the Temple; for it is well known that it was not at all unusual to deposit muniments in churches for safe custody; and we have instances of money and other valuables being placed in the charge of the Knights Templars while resident there; a confidence which might still have been continued to the Knights of St. John of Jerusalem, whose property the Temple then was. Indeed, if the lawyers were at that time domiciled in the Temple, it seems extraordinary that their books and rolls should be placed in the church rather than in their own custody. Stow, however, proceeds to say, that 'this house they spoyled for wrathe they bare to the Prior of St. John's, unto whom it belonged;' and that they went from thence to the Savoy, destroying in their way all the houses that belonged to the Hospital of St. John. This would show that the animosity of the rebels was not against the lawyers so much as against Robert de Hales, the Prior of St. John's, who was then treasurer of England, and whom they murdered on Tower Hill; and it would seem to lead to the inference that the Hospitallers, rather than the lawyers, were then in the actual occupation of the Temple. Walsingham, it is true, in relating the same fact, while he in like manner attributes it to their anger against the treasurer, describes the place as one 'in quo apprenticii juris morabantur nobiliores.'

"From this word 'nobiliores' an argument has been raised that the Temple was at that time one of the superior places for legal study, and had even then acquired the title of an Inn of Court, in contradistinction to an Inn of Chancery. But when we find that this writer, who flourished half a century afterwards, speaks of the place as 'locum qui vocatur Temple-Barr,' we may judge what reliance is to be placed on the minute details of the transactions he records."

The reign of Henry IV. is introduced, with some remarks on the King's policy, occasioned by the weakness of his title to the throne, and Mr. Foss then adverts to

the tradition of Prince Henry being sent to prison by Chief Justice Gascoigne.

"The history is told in various ways; but the more authentic account seems to be, that the prince, on the arraignment of one of his servants for felony before the Chief Justice, imperiously demanded his release: and having been refused, with a rebuke for his interference, had angrily drawn his sword on the judge. His passion was instantly checked by the dignified demeanor of Gascoigne, who calmly called on him to remember himself, reminded him of the position in which he would one day stand, and committed him to prison for his contempt and disobedience. The prince submitted at once, and went away in custody: and when the incident was related to the king, he exclaimed, 'How much am I bound to your infinite goodness, O merciful God! for having given me a judge who feareth not to minister justice, and a son who can thus nobly submit to it.'

"That the lawyers were not favourites with the king, or rather, perhaps, that he was somewhat afraid of their powers of investigation, may be presumed from his directions to the sheriffs, in the fifth year of his reign, that no apprentice or man of law should be summoned to the next parliament. This parliament, which has accordingly been designated by the titles of the 'lack-learning parliament,' 'lack-Latin parliament,' and 'parlamentum indoctorum,' was rendered remarkable by the Commons' suggestion to the king, that the easiest and most proper mode of supplying the royal necessities was by seizing the revenues of the clergy; a proceeding which, though not carried into effect, no doubt helped to fix upon them the name by which they were characterised."

There is no direct evidence, says Mr. Foss, of the existence during this reign of any of the four modern Inns of Court as legal seminaries:—

"That CLIFFORD'S INN was in this and the following reigns an independent school for the students of the law, and was not connected with, much less subjected to, the Inner Temple, may be presumed from two facts: first, that we have no evidence whatever of the Temple having acquired the superiority as an Inn of Court which it afterwards attained, nor of its having yet been divided into two societies; and secondly, that one of the members of Clifford's Inn was called to the degree of serjeant-at-law from that house without the intervention of any other. This appears from a memorandum in the Common-place Book of T. Gibbon:—

"Upon Clifford's Inn hall window is a coat of arms, azure 3 fesse or, betuin 8 golden keys, 3, 2, 2, 1, with this inscription:—Will. Screen, electus et vocatus ad statum et gradum servientis ad legem extra hospitium istud et non aliunde, vixit temp. R. II., Hen. IV., and Hen. V."

"The arms still exist on the window of the present hall; but the inscription no longer remains; having probably been removed to accommodate the glass to its present position. William Skrene, as we have seen, was appointed one of the king's serjeants in 10 Henry IV.; and we find by the Year Book that he was afterwards joined in commissions of assize."

The survey of the reign of Henry V., is thus commenced:—

"The reign of Henry V. was too short, and too much occupied in preparations for war and rejoicings for victory, to afford any other materials for legal history than the succession of the judges in the ordinary Courts.

"The removal of Archbishop Arundel from the Chancery, and of Sir William Gascoigne from the office of Chief Justice of the King's Bench, the former on the first and the latter on the eighth day of his reign, do not tend to support the character for magnanimity which is usually attributed to that triumphant king. That some offence against the archbishop had been taken by him, during his father's life, appears by a passage in the instructions given by the council to the lords appointed to remonstrate with the Duke of Gloucester, in 4 Henry VI., 1436, in which reference is made to it; and the traditionary history of the check he received from Sir William Gascoigne is too well supported to admit of a doubt. Their immediate discharge, therefore, on his accession to the throne, bears too much the semblance of an unworthy remembrance of ancient enmities to satisfy an impartial historian of his reign.

"The progressive advance of the jurisdiction of the Chancery excited some remonstrances from the Commons, who complained of the writ of subpoena, invented, as they alleged, by John Waltham, late Bishop of Salisbury, as a great grievance, and as an encroachment on the Common Law of the land. The king, however, evaded their prayer for its discontinuance.

"The seals used in the beginning of this reign, both gold and silver, were the same as those in the last, with the alteration of the name. The king is stated to have taken them with him to France, and to have lost them and other jewels in the confusion of the battle of Agincourt; after which they were recovered through the agency of the Seigneur de Harcourt. The legend may have been, and probably was, changed after the treaty of Troyes from 'Rex Francie' to 'heres Regni Francie,' the style then adopted by the king: but no impression has been discovered."

Some remarkable circumstances relating to the Serjeants-at-Law at this period, are noticed by the author. In the 2nd year of the reign a writ of summons was directed to five "apprentices," commanding them to take the degree of Serjeant. Three of them

had been previously summoned and neglected to obey the writ. This reluctance to receive promotion forms a remarkable contrast with the eager ambition of the Bar in modern times. Numerous are the applications to the great head of the Law to bestow Coif or Silk, long before that Dignitary feels himself justified in conferring the honour. But in those early days the number of the Profession was probably smaller, and at all events it was essential to keep up the rank of the Serjeants-at-Law, especially as every new Coif brought a large Fee! Mr. Foss thus comments on the event:—

"The cause of this hesitation on the part of the apprentices to assume the degree is stated by Dugdale to have been the great expense attendant on their call. But granting even that this would in some measure operate, we cannot but think that we must look a little deeper for the real reason. There is ample evidence in the Year Books to show that the pleaders in the Courts were very numerous, and that the large majority were apprentices of the law, and not serjeants. It is not improbable that at this time there might be an extraordinary degree of talent among them, and that finding that their services were as much demanded and as well rewarded without as with the honour, they very naturally were disinclined to incur an additional expense, which in their opinion would not be repaid by an increase of profit. From the number of those who resisted, one would almost suspect that a contest had arisen between the serjeants and the leading apprentices for the ascendancy.

"Be that however as it may, the subject became a matter of parliamentary notice. In November, 1417, six apprentices who had received writs and had not obeyed them were summoned before the parliament, and were commanded under a heavy penalty to take upon them the state of a serjeant without any delay. Four of these six were among the nine who had been summoned in July, 1415; so that it may be presumed that the other five in that summons had made no resistance. The writs of the remaining two called before the parliament are not mentioned in Dugdale. The record does not state what were the excuses offered by the apprentices for their disobedience, but simply that they prayed a respite till the following Trinity Term; which was granted on their promise to perform their duty at that time without further delay or excuse.

"The preamble to this record speaks of the complaints made by the people that their suits in the Courts had not been so well pleaded on account of the small number of serjeants. This might seem to show that their privilege was not confined to the Common Pleas; but as it refers to the suits of the people only, which were also heard at the assizes, it may be understood as applying to those Courts also, and not as extending to the King's Bench or Exchequer."

In the Chapter on Henry VI., Mr. Foss observes, that the king did not follow the practice of some of his predecessors in attending the Courts.

"Sir John Fortescue, who wrote at the end of it, observes that it was 'not customary for the kings of England to sit in Court, or pronounce judgment themselves.' The work of this great judge, '*De Laudibus Legum Angliæ*,' is the first which treats the abstruse subject of the principles of our law in a popular form; and may still be read with benefit and pleasure, either in its original Latin or its translation, by those who are interested in tracing the foundations of our jurisprudence. It was written 'at Berry,' between the years 1461 and 1470, while the learned author, then holding the nominal title of Chancellor to the exiled king, was in banishment; 'for the encouragement and direction of the prince in his studies, and to kindle in him a desire to know and understand the laws.'"

Of the eight Chancellors of this reign, one only, it appears, was a layman,—Richard Neville, Earl of Salisbury, who, however, had been trained to arms, and was evidently selected for his military prowess rather than his legal knowledge.

Mr. Foss in his account of the Judges of this time, and the mode of their appointment, well observes:—

"When we recollect that this is not the description of a new institution, but of one which at the time it was written had already existed more than two centuries; and when we see, after a lapse of an additional four hundred years, that the old practice prevails at the present hour without any essential alteration; it is impossible not to be interested in the account thus given by an eye-witness; and the reader can scarcely be chargeable with romantic feelings if he acknowledges a degree of veneration towards a body with so ancient a pedigree, and the learning, integrity, and firmness of which have been rendered even brighter and more apparent by contrast with the failings of a few of its members, who at intervals during the course of ages have disgraced their position.

"The labours of the judges in those days do not seem to have been very severe; their sittings not exceeding three hours, from eight in the morning till eleven; and the Courts not being open in the afternoon. The rest of the day they spent 'in the study of the laws, reading the Holy Scriptures, and other innocent amusements at their pleasure; so that,' the author acknowledges, 'it seems rather a life of contemplation than of activity.'"

This part of the work comprises very full and interesting details regarding the Inns of Court and Chancery as they existed at that time, and to which we shall hereafter have occasion to refer, in a condensed review of

those learned establishments. The biographical notices of the Judges who lived in the course of this long reign are very numerous, and several very interesting.

We come next to the time of Edward IV. Mr. Foss observes, that—

"Although the judges were appointed during the royal pleasure, the peculiar circumstances under which Edward IV. ascended the throne would naturally prevent him, notwithstanding the violent spirit of party which then prevailed, from making more changes in the administration of the law than he could help. Accordingly we find that all the judges received new patents except the chiefs of the two benches; and the discharge of these, certainly in one case and probably in the other, was an act of necessity; Sir John Fortescue, Chief Justice of the King's Bench, even if he had not too far compromised himself to be reinstated, having in fact virtually resigned by flying with King Henry; and Sir John Prisot either died about the time, or voluntarily retired, as nothing whatever is recorded concerning him which could have excited Edward's displeasure."

The most curious legal incident of this reign, says our author, is the existence of two Chancellors at the same time, recognized by royal authority and acting for many weeks in the same kingdom,—of which there is no previous example nor subsequent instance. The Jurisdiction of the Court of Chancery seems to have been established during this reign on a more systematic footing.

"The patent by which Robert Kirkham was appointed keeper in 7 Henry VI. is much more specific in its language than those which had been usually issued; and contains a passage which recognises the practice of calling for the assistance of the Common Law Judges in cases of difficulty. 'And, over this, the king willed and commanded, ther and than, that all manere of maters to be examyned and discussed in his Court of Chauncery, shulde be directed and determined according to Equite and Conscience, and to the old cours and laudable custome of the same Court; so that if in any such maters any difficultie or question in the law happen to ryse, that then he therein take th' advis and counsel of summe of the kynges justices, so that right and justice may be duely ministred to every man.'"

The short reign of less than three months of Edward V., affords few materials for the author; and we pass, lastly, to the reign of Richard III.

"It is observed by Barrington, that the reign of Richard III. is a remarkable epoch in the legislative annals of the country, from the statutes having continued from this time to be in the English language. Mr. Reeves repeats the fact; and the 'Statutes at Large' appear to

confirm the assertion, though it has been contradicted by various authors. The publication of the 'Statutes of the Realm' by the authority of parliament has, however, decided the question; for there the statutes are printed in the original French as they are entered on the Rolls, a fac-simile of which is added to the work. In other respects some of these statutes, in the opinion of Mr. Reeves, are of no small importance in juridical history.

"Whether from policy or real inclination it appears that King Richard showed some interest in legal proceedings; for we are told that he went himself to the Court of King's Bench to witness the administration of the laws; and we find him personally attending in the Star Chamber, in Michaelmas Term in his second year, and propounding three questions of law to the judges, who seem to have had some trouble in answering the royal interrogator."

Here we must for the present close our notice,—referring our readers to this valuable store-house of legal history and biography, extending from the Norman Invasion to the year 1485, a period of nearly 420 years.

NEW RULES AND ORDERS

OF THE COUNTY COURTS.

[Continued from p. 317, ante.]

106. *Costs.*—9 & 10 *Vict. c. 95, s. 88.*—All costs between party and party shall be taxed by the clerk of the Court, but his taxation may be reviewed by the judge upon the application of either party; and it shall not be necessary that the costs shall be taxed in Court, or during the sitting of the Court at which judgment is given.

107. 9 & 10 *Vict. c. 95, s. 88.*—The judge shall in each case direct what number of witnesses are to be allowed on taxation of costs, and their allowance for attendance shall be according to the scale in the Schedule, unless otherwise ordered, but shall in no case exceed the allowances therein mentioned.

108. 9 & 10 *Vict. c. 95, ss. 83, 85.*—The costs of witnesses, whether they have been examined or not may, in the discretion of the judge, be allowed, though they have not been summoned.

109. Money paid into Court on a judgment shall be appropriated, first in the satisfaction of the costs, and afterwards in satisfaction of the original demand.

110. The calculation of fees payable for the issuing and execution of warrants, shall be governed by the direction given in the table of fees, that where the sum demanded is above 20*l.*, the poundage shall be taken on 20*l.* only. Provided, that this rule shall not apply to cases in which jurisdiction is given by consent, under section 17 of 13 & 14 *Vict. c. 61.*

111. 9 & 10 *Vict. c. 95, s. 94.*—Costs of

unexecuted or unproductive warrants against the goods shall not be allowed against the defendant, unless the judge shall otherwise direct.

112. Costs of warrants of commitment on which the defendant has not been taken shall not be allowed against the defendant, unless the judge shall otherwise direct.

113. Costs of executed warrants, whether of commitment or against the goods, shall be allowed, unless the judge shall otherwise direct.

114. *Orders.*—Orders for payment of money or costs, or both, and orders of adjournment, when directed by rule 85 to be served, shall in all cases be served by the bailiff of the home Court, or be sent by him in a prepaid post letter to the party ordered to pay the same. Provided, that in no case shall any mileage be allowed, but the bailiff shall be entitled to be paid only as upon a service within two miles of the Court-house, and if the bailiff elect to serve by post he shall, at his own expense, pre-pay the letter. Provided always, that it shall not be necessary for the party in whose favour such order was made, to prove that it was served previous to taking proceedings thereon.

115. Where the Court gives leave to take any proceeding, it shall not be necessary to draw up any order, nor shall any order be drawn up to warrant such proceeding.

116. *Instalments (payment by).*—9 & 10 Vict. c. 95, s. 92.—Where an order is made for the payment of any debt, damages, costs, or other sum of money by instalments, such instalments shall be payable at such periods as the Court shall order; and if no period be mentioned, the first shall become due on the 28th day from the day of making the order, and every successive instalment shall become due at a like period of 28 days from the day of the previous instalment becoming due; and such instalments shall be paid at the office of the clerk and not to the party in whose favour such order was made.

117. When an order is made for payment by instalments or otherwise, the clerk shall give notice to the plaintiff by pre-paid post letter, according to the form in the Schedule, of every payment made, and the fee allowed for such notice may be deducted from the amount paid in, whether such sum is paid out to the plaintiff or not, and such fee shall not be paid by the defendant: Provided that such notice shall not be given, nor the fee taken, where the instalment does not amount to 10s., unless the plaintiff shall, by writing under his hand, require the clerk to give him such notice.

118. *Proceeding on a Judgment more than a Year old.*—No warrant of execution, or summons for commitment, shall, without leave of the judge, issue on a judgment more than a year old, (unless an instalment has been paid on such judgment, or a warrant of execution against the goods or a warrant of commitment has been issued within a year from the time of obtaining such judgment,) or if more than a year has elapsed since an instalment has been paid, or since the expiration of the warrant

against the goods, or of the last warrant of commitment; but no notice to the defendant, previous to applying for such leave, shall be necessary, and such leave shall be expressed on the warrant under the seal of the Court.

119. *Execution.*—Warrants of execution shall bear date on the day on which they are issued, and shall continue in force for three calendar months from such date, and no longer.

120. 9 & 10 Vict. c. 95, s. 95.—Where a defendant has made default in payment of the whole amount awarded by the judgment, or of an instalment thereof, execution may issue against his goods without leave of the Court, and such execution shall be for the whole amount of the judgment and costs then remaining unsatisfied, unless in the case of instalments the judge otherwise direct at the time of giving judgment.

121. 9 & 10 Vict. c. 95, s. 94.—The clerk shall, on issuing a warrant of execution, indorse on such warrant the amount to be levied, distinguishing the amount of the debt or damages and costs adjudged to be paid, the amount of the fees for issuing the warrant, and the bailiff's fees for its execution, including mileage, to the place in which the bailiff is directed to take the goods, and no further mileage shall be taken by the bailiff.

122. Successive warrants of execution against the goods may be issued without leave of the Court, and they may also be issued under the same circumstances, and on the same conditions as in the case of successive summonses to appear to a plaint, except that the fee for issuing such warrants shall in all cases be paid, and such successive warrants shall bear date of the day on which they are issued. See Rule 41.

123. 9 & 10 Vict. c. 95, s. 95.—Successive warrants against the goods may be issued when only a part of the judgment is satisfied, on payment of fees proportioned to the amount of the judgment remaining unsatisfied.

124. Warrants of execution against the goods may be issued concurrently into one or more districts, provided that the costs of more than one warrant shall not be allowed against the other party, unless by order of the judge.

125. *Summons for Commitment.*—9 & 10 Vict. c. 95, s. 98.—Every summons for a party to appear, pursuant to the 98th section of the 9 & 10 Vict. c. 95, may issue at any time without leave of the Court, except in cases provided for by Rule 118, and shall be forthwith issued by the clerk to the bailiff and shall be served personally not less than three clear days before the day on which the party is required to appear to such summons, unless it be proved on oath at the hearing, to the satisfaction of the judge, that such party was about to remove out of the jurisdiction of the Court, or was keeping out of the way to avoid service, in which case, service upon the party at any time before the time appointed for the appearance of such party shall be sufficient.

126. 9 & 10 Vict. c. 95, s. 100.—Where a

summons for commitment is heard in a Court other than that in which judgment was obtained, and the order of such last-mentioned Court is altered by the judge of such other Court, all payments under such order shall be made into, and execution thereupon against the goods shall be issued by, the Court which alters the order.

127. Where a certified copy of a judgment is obtained, the clerk shall make a memorandum of having given such certificate on the minute of the judgment, and no execution against the goods or summons for commitment shall issue upon such judgment, from the Court in which the judgment was obtained, until it is shown to the Court whether any and what proceedings have been taken thereon in any other Co. rt.

128. Successive summonses for commitment may be issued without leave of the Court, and they may also be issued under the same circumstances, and on the same conditions as in the case of successive summonses to appear to a plaintiff. See Rule 41.

129. Concurrent or successive summonses for commitment may be issued in the same district or in different districts by the several Courts thereof, provided that in no case shall a summons for commitment be issued except by the Court of the district wherein the party summoned then dwells or carries on business; and the costs of more than one summons shall not be allowed against the other party unless by order of the judge.

130. *Commitment.*—9 & 10 Vict. c. 95, ss. 99 & 101.—When a defendant does not dwell or carry on business in the district of the Court to which he has been summoned to appear to a plaintiff, he shall not be liable to be committed at the hearing of such summons, whether he appears to such summons or not.

131. Warrants for commitment, whenever issued shall bear date on the day on which the order for commitment was made, and shall continue in force for three calendar months from such date, and no longer; but no order for commitment shall be drawn up or served.

132. In cases of commitment under sections 99 or 101 of the 9 & 10 Vict. c. 95, the amount of the judgment, and all costs payable by the defendant, shall be indorsed on the warrant, and the amount due to the bailiff for execution shall be stated separately.

133. Where an order is made for commitment for non-payment of money, the defendant may, at any time before his body is delivered to the custody of the gaoler, pay to the bailiff the total amount indorsed on the warrant, and on receiving such amount, the bailiff shall discharge the defendant out of custody and shall within 24 hours from receiving the same pay over the amount of the judgment and costs to the clerk.

134. 9 & 10 Vict. c. 95, s. 110.—In all cases of commitment for non-payment, it may be made part of the order that on production of the clerk's certificate, stating that payment or satisfaction of the sum and costs remaining due at the time of making the order for im-

prisonment together with the costs of obtaining such order and all subsequent costs has been made, the defendant shall be discharged.

135. Successive warrants of commitment may, by leave of the judge, (without issuing a fresh summons when no previous warrant has been executed,) be issued under the same circumstances, and on the same conditions as in the case of successive summonses to appear to a plaintiff, except that the fee for issuing such warrant shall in all cases be paid, and such successive warrants shall bear date of the day on which leave was given.

136. Warrants of commitment may be issued concurrently against the same party into the same or different districts; provided that the costs of more than one warrant shall not be allowed against the other party unless by order of the judge.

137. *Transmission of Fees and Proceeds of Executions to and from Foreign Districts.*—9 & 10 Vict. c. 95, s. 61.—Where a summons is required to be served in a Foreign district, the clerk of the Home Court shall transmit such summons to the bailiff of the Foreign Court in a letter, according to the form in the Schedule, stating therein the amount of fees due to the bailiff of the Foreign Court, and the clerk of the Home Court shall account for and pay to the treasurer of his Court, at the time of making his monthly return of fees, &c., to such treasurer, the bailiff's fees received by him for the service of the summons in the Foreign District, and the bailiff of the Foreign Court shall serve such summons and shall produce to the treasurer of his Court, at the time of audit, the letter from the clerk of the Home Court transmitting the summons, and thereupon such treasurer shall pay to the said bailiff the amount of the fees therein stated, unless the judge of the Foreign Court or the judge of the Home Court shall, by writing, have signified to the treasurer that such fees shall not be paid, and in such case the amount of such fees shall be placed to the credit of the general fund of the Foreign Court.

138. 9 & 10 Vict. c. 95, s. 104.—In all cases of executions issued into a Foreign District, whether against the goods or the person, the fees due for the issuing thereof in the Foreign Court, and to the bailiff of the Foreign Court, for execution thereof, and for carrying the delinquent to prison, if any, shall be paid and accounted for by the clerk of the Home Court to the treasurer of his Court at the time of making his monthly return of fees, &c., to such treasurer, or at such time as the treasurer shall require, and the clerk of the Foreign Court shall immediately, on the receipt of the said warrant, make an entry in the form prescribed in the Schedule, in a book to be called "The Foreign Execution Book;" and after the bailiff shall have made his return as directed, the amount of fees therein mentioned shall be at the time of audit, divided and applied by the treasurer of his Court, as directed by the order of the Secretary of State of the 15th November, 1850, unless the judge of the

Foreign Court or the judge of the Home Court shall, by writing, have signified to the treasurer that the bailiff's fees shall not be paid, and in such case the last-mentioned fees shall become part of the general fund of the Foreign Court.

139. 9 & 10 Vict. c. 95, s. 104.—9 & 10 Vict. c. 95, s. 106.—Where, by virtue of any process issued into a foreign district, any money shall have been received by the bailiff of the Foreign Court, such bailiff shall, within 24 hours from the receiving of such money, pay over the same to the clerk of the Foreign Court, and shall make a return in writing of the amount received; and in the case of a levy having been made, the bailiff shall state in the return the gross amount produced by such levy, the particulars of the appraiser's and broker's charges, and the fees allowed for keeping possession, and pay over to the clerk of the Foreign Court the amount levied, less such charges and fees, and the clerk of the Foreign Court shall certify in the said return the amount paid into Court, and the correctness of the said charges, and in all the above cases shall account for and pay over such amount to the treasurer of his Court, at the time of making his monthly return of fees to such treasurer, or at such time as the treasurer shall require, and the high bailiff shall thereupon transmit such return to the high bailiff of the Home Court as directed by the 104th section of 9 & 10 Vict. c. 95, and such latter bailiff shall, within 24 hours from the receipt of such return, deliver the same to the clerk of his Court, who shall thereupon pay out of any money in his hands, to the plaintiff in the cause, the amount certified in such return to have been received by the clerk of the Foreign Court, as the proceeds of the execution, and shall enter in a book the amount so certified in the form given in the Schedule, and the clerk of the Home Court shall file such return, and the clerk shall be allowed by the treasurer of his Court, at his audit, the amount so paid.

140. Where any money is paid or received by any treasurer as the proceeds of fees on executions in respect of process issuing into a Foreign District, an account thereof shall be kept by the treasurer, and an account of the same so paid and received shall be transmitted by him to the Commissioners of her Majesty's Treasury, at such times and in such manner as they shall direct.

[To be continued.]

ATTORNEYS' CERTIFICATE DUTY.

OPINIONS OF THE PRESS.—POSTPONEMENT OF THE MEASURE.

THE *Evening Freeman*, of Thursday, August 7, has the following observations upon this subject:—

"There still continues a great deal of uncertainty as to the real motives for withdrawing the bill for the repeal of the annual certificate duty payable by attorneys. The prudence of

that proceeding is also matter of controversy. In returning to the question, the *Law Times* of last Saturday states: 'We have been unable to obtain any positive information as to the motives that led to the abandonment of this bill, or whether it was, indeed, the result of a promise of relief from the government. Nothing less than this could have justified retreat at the moment of victory.'

"The *Legal Observer* of the same date deals directly with the question:—'Why Lord Robert Grosvenor did not proceed further with the bill this session?' In answer to that our contemporary argues:—'It was impossible after the 8th July to pass it through both Houses against the will of the ministry. At some later stage it would probably have come on in the middle of the night, in a comparatively thin House, and been defeated.'

"Giving the subject our best consideration, we agree with our contemporary, the *Legal Observer*, that it would have been mere waste of time and power to attempt to press the bill through at the fag end of the session: but then we should like to know why Lord Grosvenor held over the bill to such an advanced stage of the session as the 8th of July? Except for the moral influence of a victory over the ministry, it was useless to bring it forward so late in the session without desiring to throw suspicion upon Lord Grosvenor's advocacy. We think it right to make these observations, that there may be no excuse for the repetition of a mistake which has been so fatal in the operations of this session. Some of our English contemporaries praise Lord Grosvenor very much for his '*generalship*' in this business. It may be our want of skill in such matters, but we think a judicious general ought not to have allowed the spring to pass over, and to delay opening his campaign until the close of the summer, when there was only time to fight one general engagement, productive of no more decisive results than that of a sharp skirmish. However, the experience will have been worth the price at which it was bought if it ensure the opening of the Irish campaign in sufficient time to allow the war to be brought to a close within the coming session. In the meanwhile the attorneys ought not to be inactive; much depends upon themselves. In their case to deserve is to ensure success. They have only to use with seal and discretion the means within their own hands, and their exertions to get rid of this unjust tax must be triumphant. It must be said that the English profession did really set their shoulders to the work with energy and like practical men. There were petitions presented from 120 cities and towns in England. These were exclusive of the leading petition from the Incorporated Law Society in London. Even Wales sent forward nine petitions, and Scotland was not behind:—There were sixteen Scotch petitions, of which one half were from incorporated so-

¹ The causes of the delay have been already explained to our readers, *ante*, p. 297.

cities ranging over the greater portion of the country.² We regret to have to add there were only six petitions from Ireland. One of these was from the Dublin Law Society, of whose committee and secretary it is only justice to say that they were unremitting in their exertions, and during the session maintained a very active and useful correspondence with the London Society. Five of the six petitions that we speak of were from Dublin, Cork, Limerick, Londonderry, and Kerry.

"Trusting that by next session Lord Grosvenor will improve in his 'generalship,' we also hope that the Irish wing of his army will be in a higher state of discipline, if they want to get rid of the tax—and in the present condition of the profession 12*l.* a-year is no light burthen to a great number of its individual members. There should be at least fifty petitions from the Irish attorneys and solicitors. To be effective there should be a petition from every county and borough in Ireland. The very display of numbers will have weight, but the great value will consist in bringing local influences to bear upon the members of parliament which will be best done by getting up petitions in this way, and having them presented through the parliamentary representatives of the places from which they emanate. In counties, and in such boroughs as are represented by two members, the petition should be sent to the senior member, with a request to the junior to support the prayer of the petition.

"There can be no difficulty in getting up these petitions. Parliament will re-assemble early in February next. Immediately after the opening of the session, the petitions should be poured in. Ten lines of a petition will do, and the assembling of the attorneys at quarter sessions affords such facilities for getting up the petitions as to exclude the idea of trouble. Next January there will be quarter sessions in every county in Ireland. Just the time to get up the petitions, and just the time to apply to the members who will have in view the approach of a general election. It will really not take ten minutes of the time of some active member of each quarter sessions to get up and forward a petition from his county. Nothing short of a general practical proceeding of this kind will rub out the reproach which follows from the astounding fact that only six petitions have gone from Ireland!! And this has arisen, not from any indifference on the part of the profession, but from want of a plan of action. We have hardly ever met with an attorney who did not complain of the indignity and hardship of the tax. Even as a matter of pounds, shillings, and pence, there are very few of the profession who do not feel the inconvenience of paying it. It operates upon the great body of practitioners as a very serious income tax, to which no other professional class is subject. A man in limited or moderate practice finds it no easy matter to muster up

12*l.*—the annual dividend of close upon 400*l.* in the funds—upon every 6th of January; and let it be recollected that inability to do so is an instant suspension of his faculties to earn bread for himself and his family. The moment the attorney is unable to pay in his tax, that moment he is virtually stripped of a profession which to acquire cost him more than would have made him a physician, or a surgeon, or a barrister."

Our contemporary in Dublin is probably not aware of the difficulty of bringing on the repeal of a tax in opposition to the government, and in the last Session the ordinary difficulties were increased by various public events which delayed the motion.

STATE OF THE PROFESSION.

ITS DIFFERENT BRANCHES.

To the Editor of the Legal Observer.

SIR,—It seem difficult to imagine why attorneys are unpopular while barristers are the reverse.

The law is imperfect—it is too dilatory and too expensive. The public has sufficient learning to know that attorneys are the officers by which the laws are put in motion, and because the public is dissatisfied with the working of the laws, attorneys are the parties who must be condemned as the cause of the mischief. Allow me to suggest, sir, that while attorneys stand quietly to have their rights and privileges discussed and cut down by learned counsel, that the public would do well to look into the rights and privileges, the customs and usages, of the Bar.

What is the most costly portion of a Chancery suit? Counsel's fees. What is the cause of Chancery motions and petitions standing over so long for a hearing? The customs and usages of the Bar. In fact, what is the real opponent of Chancery Reform but our "learned friends" with their customs and usages?

But my desire is now to draw attention to "the usages of the Bar," and although I am no advocate for destroying the rights of individuals, yet, when it interferes with the rights of the community in such a way as to operate as a stay of execution of justice, I will be the first to give my voice against it. To make these observations practically apparent, I will exemplify my view thus:—In the Court of Chancery it is necessary to commence proceedings (unless by Claim) by a fee to counsel. A bill is filed—it next becomes necessary to apply to the Court for a receiver—a fee to counsel is given to move accordingly—this is done in Hilary Term, 1851. The motion is held over until Easter, from Easter to Trinity, and from Trinity to Michaelmas, and after Michaelmas, that is to say, just before the Christmas Vacation the motion is heard, so that an order may be drawn up (if diligence be used) by the middle of Hilary Term, 1852. What has caused the delay?—The usages of the Bar. But it may be

² The list of these petitions will be found in the No. for 2nd August, p. 232, *ante*.

said, why give briefs to counsel who delays his cases? There again, the answer is prompted from a knowledge of the "usages:"—because the Court always calls on counsel to move according to seniority and precedence, and in consequence the leaders occupy the whole of the Seal, and those behind the Bar must be on the *qui vive* for a chance to move. This causes another evil: attorneys are obliged to give a fee to counsel in proportion to his status at the Bar, and it becomes advisable to give a higher fee to a senior counsel to secure a motion being made early. I remember an instance of a junior counsel having a fee to get a bill dismissed for want of prosecution. After some difficulty he applied to the Court, when to his surprise up jumped a gentleman in the front row, and placing himself in an attitude of defiance, exclaimed, almost mechanically, "Opposed." About seven or eight months after this occurrence, the junior had an opportunity of bringing it on again, when the gentleman in silk said, "that he was not now instructed, and that the order might go."

Counsel's fees will be found, on examination of a bill of costs in any cause, to be a very considerable proportion of the aggregate amount, though notwithstanding the amount being matter imperatively calling for consideration, it is not that alone which is objectionable—thus, The Common Law fee to counsel of 10s. 6d. for signing a plea, because the defendant states "that he is ready to verify," instead of "he puts himself upon the country;" with many others not a whit less absurd. Common Law Pleadings are for the most part drawn by attorneys, (except those termed special pleadings, which are drawn by counsel or special pleaders). Chancery pleadings are always drawn by counsel. Take the record of a suit at Common Law, and the bill and answers of a suit in Chancery, and compare them: the Common Law Record draws the dispute to a point for decision, and extends perhaps over 20 folios. The bill alone in Chancery is beyond all doubt not less than five times this length, and adding to this a similar quantity for each defendant's answer, you may form a slight idea of the length of the record of pleadings of a suit in Chancery. It is not necessary to read much of the Chancery pleadings to see which is the most like common sense. Those who are sincere in their wish for Chancery Reform, would do well to consider what effect it would have to give a precedent for common forms of pleadings in Chancery, and to let attorneys draw them. Attorneys draw Common Law Pleadings, why should they not draw Equity Pleadings?

T. H. S.

LAW OF PARTNERSHIP.

SUGGESTED IMPROVEMENTS.

To the Editor of the Legal Observer.

WHERE a party is desirous of suing a partnership, how many cases occur of great difficulty in ascertaining the names of a firm trad-

ing under the style of "Jones, Brown, & Co."

In Scotland, I am informed they will allow you to sue the parties by the name under which they trade, and in France, any one of the firm, and the judgment is made available against such firm as is the case here, where the public officer or secretary of a company is sued in order to make the company's assets liable.

To obviate all inconvenience in such cases would it not be found a most convenient course to adopt a public registry of firms as well as of public companies. Under the present system, no notice is given of a new partner being taken into a firm, but if one goes out the usual advertisement of that fact duly appears in the *Gazette*, and at no small cost. How very simple it seems to be to enact, "that any two or more persons joining in any partnership for any purpose whatsoever shall, within a given time, furnish to the registrar of public companies a full description of their names, places of abode, business, &c. and pay 1s. for every name so registered."—Any alteration by way of addition to be registered in a similar manner and on payment of a similar fee, as well also as any withdrawal therefrom, which if sufficiently registered would do away altogether with the necessity as well as the expense of an advertisement in the *Gazette*—and all persons desirous of ascertaining the present members of any firm could be allowed to search the books for that purpose, on payment of a similar fee of 1s.

The above particulars, if not registered in due time after any alteration in a firm, the original or surviving partners to be liable to penalties of a sufficient amount to ensure attention to a due registration. E.C.

SELECTIONS FROM CORRESPONDENCE.

GRAND JURY SYSTEM.

Two respectable solicitors, with the client of one of them, lately had an indictment wantonly preferred against them for an alleged conspiracy in a cause of divorce, for which there was not the slightest pretext.

The indictment was presented to the Grand Jury without any previous investigation before a magistrate, and solely for the purpose of annoyance and to occasion vexation and expense. Doubtless, the kind-hearted prosecutor (or persecutor) confidently expected to take the parties on a warrant on Saturday, and lock them up from their families until Monday: In this, however, he was disappointed and foiled, for on his attending at the Clerk of the Peace's office on the Saturday for the warrant he found two of the defendants (who had received information of the disreputable proceeding) in attendance and in the act of entering into the usual recognizance to appear and plead thereto in due course.

This was accordingly done, and the proceedings having been removed by *certiorari* into the Court of Queen's Bench, the matter came on for trial before Lord Chief Justice Campbell,

when (*credat Judex Apella*) the Attorney-General, on behalf of the prosecutor, withdrew from the prosecution, avowing that there was no evidence of any conspiracy, of which the defendants were openly and honourably acquitted.

Thus the defendants in the most wanton manner, from revenge and personal motives, have been on pretence of law subjected to expenses little short of some 800*l.*, to which the prosecutor is not liable.

My object, however, in troubling you is to consider whether it does not comport with the object and views of the Incorporated Law Society to endeavour to effect a remedy for so gross and palpable an abuse under the pretence of law and justice, and the remedy I should propose is manifest, that in no case shall a prosecutor be at liberty to go before a grand jury with *ex parte* evidence without a previous investigation in the presence of both parties before a magistrate, and secondly, to subject the prosecutor to the costs of the defendants in case of acquittal.

If such an indictment would lie, what is there to prevent the doctors at the Commons or the counsel being included therein?

INDEX.

ATTORNEYS—PARTNERS—PUBLIC APPOINTMENT.

A. and B. are partners as attorneys and solicitors, with an equal division of profits. A. is appointed clerk to a Watching and Lighting Committee at a stipend of 25*l.* a-year. To whom does this stipend belong—to A. or to the firm? ONE, &c.

DUES AND QUAYAGES.

Will any of your readers kindly give an opinion as to whether the proper remedy for recovery of dues and quayages, payable by *prescriptive usage* in a borough, is by distress; and also, whether an action of *indebitatus assumpsit* might, with equal propriety, be maintained?

Also, whether the County Courts, as at present constituted, are competent to entertain either an action of *replevin* or of *assumpsit* arising out of any such distress, regard being had to sect. 17 of 13 & 14 Vict. c. 61.

A SUBSCRIBER AND CONSTANT READER.

MASTERS EXTRAORDINARY IN CHANCERY.

From 24th June, to 19th August, 1851, both inclusive, with dates when gazetted.

Addenbrooke, Thomas, Stourbridge. July 22.

Benson, James, Birmingham. July 22.

Chandler, William Lloyd, Tewkesbury. July 4.

Harper, Charles, Hadleigh. August 12.

Heming, William Waters, Banbury. July 4.
Hooper, Henry Wilcocks, Exeter. July 11.
Hutchinson, John, Sunderland. August 15.
Miles, Thomas, jun., Leicester. July 29.
Salmon, Henry Augustus, Bristol. July 1.
Woodlock, William, Albert Terrace, Black Rock County, Dublin, (for Ireland). July 25.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 24th June, to 19th August, 1851, both inclusive, with dates when gazetted.

Amory, Samuel, Thomas Wright Nelson, Marcus Travers, and Henry Bertie Watkin Williams Wynn, 25, Throgmorton Street, City, Attorneys and Solicitors. July 4. (So far as relates to the said Thomas Wright Nelson and Henry Bertie Watkin Williams Wynn.)

Cole, Richard John, and Henry Scott, 12, Furnival's Inn, Holborn, Attorneys and Solicitors. August 15.

Foljambe, Thomas, Benjamin Dixon, and Edwin John Pickslay, Wakefield, Attorneys and Solicitors. July 4. (So far as relates to the said Thomas Foljambe.)

Leach, Robert, and John Leach, Martock, Attorneys and Solicitors. August 15.

Staniland, Samuel, and William Long, 30, Bouverie Street, Fleet Street, Attorneys and Solicitors. July 1.

Sutton, George Frederick Prince, Creasy Ewens, Francis Ommannney, and William Prudence, 6, Basinghall Street, City. July 4.

Twiss, George Joseph, and Joseph Edward Marshall, Cambridge. Attorneys and Solicitors. June 27.

Tyler, Joseph, and Joseph Francis Holmes, 7, South Square, Gray's Inn, Attorneys and Solicitors. July 18.

PERPETUAL COMMISSIONERS.

Appointed under the *Fines' and Recoveries' Act*, with dates when gazetted.

Benning, Charles Stockdale, Dunstable, in and for the County of Bedford, also in and for the Counties of Hertford and Buckingham. July 18.

Butler, George Slade, Rye, in and for the Counties of Sussex and Kent. August 1.

Lake, Henry, 10, New Square, Lincoln's Inn, in and for the City of London, also in and for the City and Liberties of Westminster, and also in and for the Counties of Middlesex, Essex, Kent and Surrey.

Patteson, Edward John, Poulton in the Fylde, in and for the County of Lancaster. July 4.

Toller, Richard, Leicester, in and for the County of Leicester. July 22.

Ward, Edmund, Prescott, in and for the County of Lancaster. August 1.

NOTE OF THE WEEK.

FURTHER PROROGATION OF PARLIAMENT.

It is this day [25th August] ordered by her Majesty in Council, that the Parliament, which

stands prorogued to Thursday, the 4th day of September next, be further prorogued to Tuesday, the 4th day of November next.—From the *London Gazette* of August 26.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Reporte Guardians of Holborn Union. July 18, 23, 1851.

PAUPER LUNATIC.—RECEIPT OF DIVIDENDS ON FUND IN COURT BY CLERK OF UNION FOR MAINTENANCE.

The clerk of a union was empowered to receive the dividends to which a pauper lunatic was entitled, on a fund amounting to 970l. paid into Court under the 7 Geo 4, c. 77, (the Charing Cross Act,) for the purchase of certain houses required for the purposes of that act, to meet the expense incurred by the parish in her maintenance, &c., in pursuance of the 7 & 8 Vict. c. 101, s. 27 (the Poor Law Amendment Act.)

This was an application on behalf of the clerk of the Holborn Union for leave to receive the dividends on a sum of 970l. which had been paid into Court under the Charing Cross Act, 7 Geo. 4, c. 77,¹ for certain houses which had been taken by the Commissioners, and on which an annuity of 17l. had been charged for the benefit of Elizabeth Hall, a pauper lunatic, maintained by the parish, and a further annuity of 10l. for her daughter. It was proposed to pay the balance to the daughter after deducting the expenses of the lunatic.

W. T. S. Daniel, in support, referred to the

¹ By s. 21, of which it is enacted, that "if any money shall be agreed or assessed to be paid for any houses," &c., "purchased, taken or used by virtue of this act for the purposes thereof, which shall belong to any body politic, corporate or collegiate, *feme covert*, infant, lunatic or other person or persons under any disability or incapacity, or not legally entitled absolutely to dispose of the premises by the sale of which such money shall be produced, such money shall, in case the same shall amount to or exceed the sum of 200l., with all convenient speed be paid into the Bank of England," "to the intent that such money shall be applied, under the directions and with the approbation of the said Court, to be signified by an order made upon the petition to be preferred in a summary way," "and in the meantime and until the bank annuities shall be ordered by the said Court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid, by order of the said Court to the body or bodies, person or persons, who would for the time being have been entitled to the rents and profits of the lands," &c.

7 & 8 Vict. c. 101, s. 27, which enacts, that "if it be made to appear to any two justices that any insane person, lunatic, or idiot, chargeable to any parish hath an estate more than sufficient to maintain his family, they shall by order under their hands and seals direct the overseers of the parish to which such person is chargeable to seize so much of any money, to seize and sell so much of any goods and chattels, or to receive so much of the rent of the lands or tenements of such person as is proved to such justices to be necessary to pay any charges incurred in providing for the removal, maintenance, clothing, medicine, and care of such person; and if any trustee or other person having the possession, custody, or charge, of any property of an insane person, lunatic, or idiot, or if the Governor and Company of the Bank of England, or any other person or persons, having in his or their hands any stock, interest, dividend, or annuity due to any such insane person, lunatic, or idiot, pay any money to any overseer or to any guardians of the poor to defray the charges incurred by any parish in the removal, maintenance, clothing, medicine, or care of such insane person, lunatic, or idiot, the receipt of such overseer or the clerk of such guardians shall be a good discharge to such trustee or other person aforesaid."

The Lord Chancellor, after looking into the statutes cited, made the order as asked.²

Rolls' Court.

Attorney-General v. Mayor and Corporation of South Molton and others. July 25, 1851.

CHARITY.—PARTICIPATION IN INCREASED RENTS OF PROPERTY.

Charities were held entitled to participate in the increased rents of the charity property under a will, and on an information a declaration to that effect was made, with a reference for the settlement of a scheme.

HUGH SQUIER, by his will, dated 24th Feb. 1709, after referring to a school which he had built and founded for the education of the children of poor persons in the town and parish of South Molton, gave and devised his property at Northam, in the county of Devon, to the mayor and aldermen of South Molton, with directions to pay among certain other annual sums 100l. towards the maintenance of the school, to be applied in paying the master, &c., and one-half the surplus, which he computed to be about 60l. a year, to the mayor for

² See also, *In re Upfill's Trust*, ante, p. 260.

the time being of South Molton, towards the expenses of the mayoralty, and the other half towards the repair of the highways in or near the town. The annual value of the land having increased from about 160*l.* to nearly 800*l.*, this information was filed, praying a declaration that the land, &c. so bequeathed to the defendants were held by them for charitable purposes only, and not for their own use, and for the application of the rents to the several charitable purposes expressed in the will, and seeking an account and the settlement of a scheme for the administration of the charity.

Lloyd and W. Morris, in support; *Walpole and Karslake*, contra, for the corporation; *Rospell and Speed*, for the school trustees.

The Master of the Rolls said that the school and the other charitable objects mentioned in the will were entitled to participate proportionately in the increased rents of the charity property, and directed the Attorney-General to be served and to be at liberty to attend the Master upon the settlement of a scheme separately from the relator. The corporation to pay the costs of the relator up to and including the hearing, and the trustees to pay the 500*l.*, which was in their hands, into Court.

Vice-Chancellor Knight Bruce.

Ex parte Webb, in re Dowson. July 2, 1851.

SOLICITORS.—PROOF FOR COSTS WITHOUT TAXATION, WHERE BILL GIVEN FOR AMOUNT.

On appeal from the Commissioner, proof was admitted for the amount of a debt in respect of a bill of costs for business transacted for a bankrupt by solicitors before the bankruptcy, without taxation, where a bill of exchange had been given for the amount, which, although at first disputed, was it appeared now settled.

THIS was an appeal from the decision of the Commissioner refusing to admit the proof by the petitioners, who were solicitors, of the amount of their bill of costs for business transacted for the bankrupt before his bankruptcy, without taxation at their own expense. It appeared that a bill of exchange had been given for the amount in respect of which there had been some dispute which was now settled.

Selwyn in support.

The Vice-Chancellor said, the proof must be admitted.

Vice-Chancellor Lord Cranworth.

In re Direct Birmingham, Oxford, and Brighton Railway Company, ex parte Bright. July 3, 1851.

WINDING-UP ACTS.—PRELIMINARY EXPENSES.—LIMITATION OF LIABILITY FOR.—PROVISIONAL COMMITTEE-MAN.

Upon appeal by the official manager from, and confirming, the decision of the Master, held, that the respondent was only liable to

the expenses of promoting an undertaking from the time when he accepted shares therein and became a provisional committee-man, and not also in respect of those incurred previously to such acceptance and becoming a member.

THIS was an appeal on behalf of the official manager of the above company from the decision of Master Brougham inserting the name of the respondent, Henry Smith Bright, on the list of contributories in respect of the expenses of the committee incurred between the 14th Oct., when Mr. Bright accepted shares in the undertaking and became a member of the provisional committee, and the 30th November, when it was discovered the standing orders of the House could not be complied with in sufficient time.

Bethell and Roxburgh, in support, contended that the respondent was liable to the expenses incurred previously to the 14th October, and subsequently to November 30th, down to the abandonment of the scheme.

C. P. Cooper and Morris, contra.

The Vice-Chancellor said, that there could be no community between the parties who only agreed to take shares in an undertaking and the promoters forming it before the parties bound themselves by a deed of settlement and complete registration was obtained, and that the respondent was therefore only liable to contribute according to *Upfill's case* after the acceptance of the shares and becoming a member of the provisional committee, and the master's decision must be affirmed.

Vice-Chancellor Turner.

Moore v. Prance. July 12, 14, 1851.

SETTING ASIDE DEED WHERE PREPARED BY SOLICITOR WITHOUT PROPER AUTHORITY FROM CLIENT.—COSTS.

The plaintiff, being in embarrassed circumstances, applied to the defendant, a solicitor, to raise a sum of money on security of his property, and the defendant, instead of the common mortgage deed, prepared a deed whereby he was appointed trustee and the estate conveyed to himself on certain trusts in strict settlement. The Court, upon it appearing that the plaintiff had not concurred in the deed, ordered it to be set aside with costs, and decreed a reconveyance.

THIS bill was filed to set aside a deed dated August 3, 1847, and for a reconveyance and reassignment of the property comprised therein with costs occasioned thereby. It appeared the plaintiff requiring an advance applied to Mr. William Woodland, solicitor, of Taunton, who, however, after communicating with the solicitor of the family, declined to negotiate the loan, and that the defendant, Mr. Prance, advanced him some sums of money and subsequently prepared the deed now sought to be set aside whereby the plaintiff's estate was

conveyed and assigned to the defendant on trust out of the income to make certain payments to the plaintiff's mother and then to pay the interest on any sums of money which should be raised for the plaintiff as also the expenses of preparing the deed and executing the trusts, and subject thereto to the plaintiff for life, or as he should by deed appoint, and in default thereof and without issue, for the plaintiff's sisters. The defendant was also empowered to demise or sell the property for the purpose of settling the plaintiff's debts.

The *Solicitor-General* and *Headlam* for the plaintiff; *Bacon* and *Terrell* for the defendant, who had offered to give up the trust on receiving an apology from the plaintiff for having said the deed had been improperly obtained.

The *Vice-Chancellor* said, that as no evidence had been adduced by the defendant, upon whom laid the burthen of proof, to show the plaintiff had concurred in the deed which had been prepared instead of a security in the common form, it must be set aside and a reconveyance decreed with costs.

Court of Queen's Bench.

Regina v. Poor Law Commissioners. June 17, 1851.

POOR LAW AMENDMENT ACT.—POWER OF COMMISSIONERS AS TO APPOINTMENT, &c., OF PAID OFFICERS, WHERE LOCAL ACT.

Held, *discharging a rule for a certiorari to bring up an order of the Poor Law Commissioners under the 4 & 5 W. 4, c. 76, as to the appointment of certain paid officers in the parish of St. James, Westminster, that the Commissioners had power under s. 46 of that act as to the appointment, continuance in office, or dismissal of paid officers, notwithstanding the parish was regulated by a local act, (2 Geo. 3, c. lviii.,) under which the vestry had the power of dismissal.*

This was a motion for a rule nisi for a certiorari, to bring up an order made by the defendants on July 17, 1850, relating to the management and relief of the poor in the parish of St. James's, Westminster. It was proposed to provide under the 83rd article of the order, that every officer appointed to or holding office under that order, other than the medical officer of the workhouse, should continue to hold the same until he should die or resign, or be removed by the Poor Law Board, or be proved to be insane, to the satisfaction of the Poor Law Board, and by other articles, the guidance and government of the workhouse were declared in the directors of the parish, who were required to appoint fit persons to the offices of master of the workhouse, matron, chaplain, schoolmaster and mistress, porter, medical officer, and nurse, with such assistants as they, with the consent of the Poor Law Commissioners might deem necessary. The parish was regulated by the 2 Geo. 3, c. lviii., and a power of dismissal was vested in the vestry.

By sect. 46 of the 4 & 5 Wm. 4, c. 76, (the Poor Law Amendment Act,) it is enacted, that "it shall be lawful for the said Commissioners, as and when they shall see fit, by order under their hands and seal, to direct the overseers or guardians of any parish or union," "to appoint such paid officers with such qualifications as the said Commissioners shall think necessary for superintending or assisting in the administration of the relief and employment of the poor, and for examining and auditing, allowing or disallowing of accounts in such parish or union," "and otherwise carrying the provisions of this act into execution," and to fix their duties and the mode of their appointment, "and determine the continuance in office or dismissal of such officers" and to regulate their salaries.

Attorney-General, Crompton and *Tomlinson*, showed cause in the first instance against the rule, which was supported by *Peacock* and *D. D. Keane*.

The Court said, that under the 46th section of the Poor Law Amendment Act, the Commissioners were to direct the overseers to appoint certain paid officers and were empowered to determine their continuance in office or dismissal, the local act did create a concurrent power in the vestry, and the rule must be discharged accordingly.

Court of Common Pleas.

Richardson v. South Eastern Railway Company. June 10, 1851.

LANDS CLAUSES' CONSOLIDATION ACT.—RECOVERY OF COSTS OF COMPENSATION JURY SUMMONED UNDER s. 68.

Held, *overruling a demurrer to the declaration that a party whose land is injured by a railway line is entitled to recover by action the costs of summoning a jury to assess the damages so sustained under ss. 51 & 52 of the 8 Vict. c. 18, where such jury is summoned under s. 68, in pursuance of the plaintiff's notice to that effect to the defendants.*

This action was brought to recover a sum of 215*l.*, the amount of compensation assessed by the jury summoned before the sheriff under the 8 Vict. c. 18, s. 68, for injury done to the plaintiff's land at Woolwich by the defendants' line of railway, and 243*l.* 1*s.* 3*d.* for costs, as settled by one of the Masters of the Court of Queen's Bench, under s. 52. The company paid the amount awarded for compensation into Court, and demurred in respect of the costs. It appeared that the defendants had, upon the plaintiff claiming 1,000*l.* for the damage sustained by him, offered to pay him 60*l.*, and that the sheriff's jury had awarded 215*l.* in respect thereof.

By section 51, it is provided that "on every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be

borne by the promoters of the undertaking;" and (s. 52) "shall, in case of difference, be settled by one of the Masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impanneling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry."

Channell, S. L., in support of the demurrer, on the ground the right to costs only applied where the company issued their warrant voluntarily, and not where they had been required to issue their warrant under s. 63.

Bull, Q. C., and Hugh Hill, contra.

The Court said, that the case was within the contemplation of the statute, and that the plaintiff was entitled to recover, and the demurrer was therefore overruled.

Court of Exchequer.

Heslop v. Baker and others. June 10, 1851.

BANKRUPTCY LAW CONSOLIDATION ACT.—REPUTED OWNERSHIP.—VESTING IN ASSIGNEES.

Held, that property in the reputed ownership of a bankrupt at the time he becomes bankrupt, does not pass to the assignees like his own effects, without an order of the Court for their sale and disposal for the benefit of the creditors, under sect. 125, of the 12 & 13 Vict, c. 106; and a rule was made absolute to enter a verdict for the plaintiff in an action brought in trover against assignees, for conversion without such order of his property in the bankrupt's possession.

This was a rule nisi pursuant to leave reserved, to enter a verdict for the plaintiff in this action, which was in trover, against the assignees of a bankrupt for the conversion of certain goods belonging to the plaintiff, and sold by them as in the reputed ownership of the bankrupt. On the trial before the late Mr. Justice Cresswell, the defendants obtained a verdict, subject to this rule.

The 12 & 13 Vict. c. 106, s. 125, enacts, "that if any bankrupt at the time he becomes bankrupt shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner,—the Court shall have power to order the same to be sold and disposed of for the benefit of the creditors under the bankruptcy."

The Court, (dissentiente Platt, B.), held that property in the reputed ownership did not pass at once to the assignees in the same manner as the bankrupt's own effects, but that it was necessary an order should be made in the terms of the 125th sect. of the act, and made the rule absolute accordingly.

Court of Exchequer Chamber.

King and another v. Rochdale Canal Company.

June 18, 1851.

CANAL COMPANY.—LOCAL ACT.—CONSTRUCTION.—ACTION.

By the 34 G. 3, c. lxxviii., the Rochdale Canal Company were authorised to construct a canal, and mill-owners having mills within 20 yards of the canal were empowered to make a communication by pipes with the canal and to take such quantity of water as should be sufficient for the sole purpose of condensing the steam used in working their engine, and for no other use or purpose, provided that an equal quantity of water were returned, less the waste of condensation, and that if any dispute should arise between the company and any person in the use of taking the water from the canal, the Commissioners under the act should finally settle and determine the same.

Held, on appeal from, and confirming the decision of the Court of Queen's Bench, that the Commissioners could recover against the owners of a mill for using the water withdrawn for other purposes than for condensation, and for withdrawing a larger portion than was necessary for the purposes limited under the act.

This was a writ of error from the judgment of the Court of Queen's Bench, (reported 18 Law Jour N. S., Q. B. 293,) in this action, which was on the case against certain mill-owners for applying the water taken from the canal to heat their boilers and for the purpose of cleansing, and taking a larger portion of water than they were empowered under the 34 G. 3, c. lxxviii., authorizing the construction of the canal, and for not returning to the canal an equal quantity of water to that withdrawn, whereby the navigation was impeded and obstructed. On the trial before Mr. Justice Erle, at the Liverpool Summer Assizes in 1848, the jury found for the company on the first two breaches, and for the plaintiffs in error on the third, and a verdict was entered with 1s. damages. A rule nisi which had been afterwards granted, to enter a nonsuit, or to arrest the judgment, had been discharged by the Court of Queen's Bench on June 20, 1849, whereupon this writ of error was brought.

By s. 113 of the 34 G. 3, s. lxxviii., power was given to "the owners of any land within the distance of 20 yards from the said canal and cuts or any of them, to make a communication between the water therein and any steam engine or steam engines by means of one or more metal pipe or pipes," "and to draw from the said canal and cuts or any of them such quantities of water as shall be sufficient to supply the said engine or engines with cold water, for the purpose of condensing the steam used for working any such engine as aforesaid," provided that an equal quantity of water should be returned less the waste by condensing such steam, and that "such water so taken shall be applied to the working of the said engine and to no other use or purpose."

and also that "if any dispute shall arise between the said company of proprietors or the said committee, and any person who shall be desirous of taking water out of the said canal or cuts or any of them for the purposes of any such engine, or shall be in the use of taking the same therefrom, such dispute shall be finally settled and determined by the said commissioners.

Crompton for the plaintiffs in error, on the

ground no damage had been sustained, and that no action could therefore be brought, and also, that the question was one for the determination of the Commissioners appointed under the act and not for a Court of Law.

Cowling for the company, contra, contended the jurisdiction of the Commissioner did not extend to the case.

The Court said, the judgment of the Court below must be affirmed.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

JURISDICTION IN SUITS FOR DISCOVERY.

[For the previous Sections of the Digest this Volume, see

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Privy Council Appeals, p. 35.

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Lunacy, p. 147.

Courts of Equity :

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Law of Attorneys and Solicitors, p. 185.

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Law relating to Trustees, p. 285.

Evidence, pp. 306, 326.]

ACCOUNTS.

See *Evidence relating to*.

ADVERSE TITLE.

1. *Deeds, &c., in defendant's possession.*—Consideration of the limits of the right to discovery, in cases of adverse title, of the deeds and evidences in the possession of the defendant. *Attorney-General v. Thompson*, 8 Hare, 106.

2. *Documents.*—A plaintiff is not entitled to discovery of documents, the right to the possession or inspection of which is not necessary to the proof, and is only consequential upon the existence of the title he claims, that title not being admitted,—but where the Court finds upon the answer, that, although the title of the plaintiff is not admitted, the question as to the existence of such title is a question to be tried,—the plaintiff is entitled to the discovery and production of particulars material to establish his case on such trial. *Attorney-General v. Thompson*, 8 Hare, 106.

3. *Party in fiduciary office.*—Obligation of a party, holding a fiduciary office over property under another, to make a discovery of the particulars of an adverse title set up by him. *Attorney-General v. Corporation of London*, 12 Beav. 8.

CORPORATION.

Penalties.—An incorporated company demurred to a bill, because the discovery thereby sought might subject it to criminal prosecution under the 59 Geo. 3, c. 69, (to prevent the en-

listing of his Majesty's subjects for foreign service, and the fitting out, in his Majesty's dominions, vessels for warlike purposes without his licence.)

The Court held, that a corporation was not liable to be indicted under that act, and overruled the demurrer. *King of the Two Sicilies v. Willcor*, 1 Sim. N. S. 334.

EVIDENCE RELATING TO ACCOUNTS.

Right to account disputed.—Distinction between cases in which discovery is sought of evidence relating to the items of an account the right to which is disputed, and cases in which it relates to the fundamental question in dispute,—the right to the account. *Attorney-General v. Thompson*, 8 Hare, 115.

Cases cited in the judgment: *Adams v. Fisher*, 3 Myl. & C. 526; *Harris v. Harris*, 4 Hare, 179; *Rowe v. Teed*, 15 Ves. 372.

See *Title*.

GRANTEE OF OFFICE.

Lands originally belonging to grantor.—There is no authority for saying, that the grantees of an office, the duties of which are performed upon land originally belonging to the grantor, is not entitled to compel the grantee of the office, claiming the land, to discover the means by which he has, (as he alleges,) during his exercise of the office, become entitled to the land or property upon which the authority to grant the office depends. *Attorney-General v. Corporation of London*, 12 Beav. 8.

ILLEGAL CONTRACT.

Defence at law.—A. B. being sued at law by the trustee of a woman to whom he, A. B., had granted an annuity in consideration of future illicit cohabitation, pleaded the illegal nature of the contract, and filed his bill against the trustee for discovery in aid of his defence: Held, overruling the demurrer of the trustee, that A. B. was entitled to such discovery. *Benyon v. Nettlefold*, 3 M'N. & G. 94.

Case cited in the judgment: *Collins v. Blanton*, 2 Wils. 341.

See *Immoral consideration*.

IMMORAL CONSIDERATION.

Turpis contractus.—A. covenanted with B. and C. to pay them an annuity in trust for a woman. The deed was good on the face of it; but the real consideration for it was, future

illicit cohabitation between A. and the woman; and that cohabitation took place, but was afterwards discontinued. B. and C. then brought an action on the covenant against A. A. pleaded the consideration for the deed, and filed a bill against B. and C. for a discovery in aid of his plea. B. demurred to the bill; and the demurrer was allowed on the ground that A. had participated in the guilt which it was the object of the deed to produce. *Benyon v. Nettlefold*, 17 Sim. 51.

Cases cited in the judgment: *Smyth v. Griffin*, 13 Sim. 245; *Batty v. Chester*, 5 Beav. 103.

See *Illegal Contract*.

INCOME TAX.

Impertinence.—Though a plaintiff cannot compel a defendant to make a discovery of his returns for income tax, still a statement (as evidence of a misrepresentation of the value of his business) that he made such returns, is not impertinent. *Mitchell v. Koecker*, 12 Beav. 44.

LEGAL TITLE.

Recovery of deeds.—A party having a legal title may sustain a bill in equity to recover deeds, without first having established his title at law, where a deed to be recovered would be the proper evidence in a trial at law to enforce the legal right against the tenant in possession of the property in question, and that notwithstanding the evidence furnished by the deed might have been obtained by means other than a suit in equity. *Elvey v. Lutyeas*, 8 Hare, 159.

OFFICE.

See *Grantee of*.

PARCELS.

See *Purchase Deed*.

PARTITION.

Sufficiency of answer.—*Defendant's title*.—The bill stated the plaintiff's title to an undivided moiety of an estate, and that the plaintiff had purchased the other moiety, but that the defendants alleged that they were entitled to that moiety under a settlement and a will antecedent to the plaintiff's purchase. The prayer was for a declaration of the rights of the parties, and a partition. The bill required the defendants to discover whether they had not represented that they were entitled under the settlement and will, and to set forth the contents of those instruments and the nature of their title, and to set forth a schedule of documents in their power, in the usual way. The defendants in their answer submitted, that they were not bound to make this discovery; and after admitting the possession of certain documents, denied having in their power any others relating in any manner to the title of the plaintiff: *Held*, on exceptions to a report of the Master finding the answer sufficient, that the defendants were bound to set forth whether they had made the alleged representations as to their title; but not whether such representations were true, or to discover the nature of their title; and that they must set forth a

schedule of all documents in their power. *Potter v. Waller*, 2 De G. & S. 410.

PENALTIES, LIABILITY TO.

See *Corporation*.

PRESCRIPTIVE TITLE.

Conservancy of the Thames.—The Corporation of London, who held the office of conservators of the river Thames under the Crown, claimed the freehold of the bed and shores, and, in answer to an information, which insisted on the rights of the Crown thereto, set up a prescriptive title, and refused to discover the charters, &c., under which they held, the particulars of their title, the mode in which they intended to make it out, or the evidence by which it was to be supported. They admitted the possession of documents relating (as they said) to their own right, and which formed material evidence for them, but did not (as they said) tend to prove the right of the Crown, and they submitted they were not bound to set forth a list thereof. The Court, on a consideration of the whole case, having regard to the nature of the title claimed to the bed or soil of the river, to the circumstances under which it was claimed, and to the fiduciary relation which subsisted between the Crown and the Corporation in respect of the conservancy, *held*, that the defendants were bound to give the discovery required. *Attorney-General v. Corporation of London*, 12 Beav. 8.

PURCHASE DEED.

Parcels, identity of.—Where the respective titles alleged by the plaintiff and defendant were antagonistic,—the plaintiff claiming the reversion in lands alleged to be in the possession of the defendant as lessee, and the defendant claiming to be entitled in fee to such lands, but admitting that he derived his title under a person alleged by the plaintiff to have been lessee only, and that the parcels mentioned in the deed under which he claimed, in some respects, although not wholly, corresponded with the parcels described in the demise to such alleged lessee, it was *held* that the plaintiff was entitled to a discovery of such parcels, and to a production of the purchase deed as described therein. *Attorney-General v. Thompson*, 8 Hare, 106.

TITLE.

Evidence.—A plaintiff is entitled to a discovery from the defendant, not only of that which constitutes his own original title, but of that the defendant's case is, [though not to the discovery of the evidence by which that defence is intended to be supported,] but also to a discovery to enable him to repel a defence which he expects will be set up. *Attorney-General v. Corporation of London*. 2 H. & T. 1, 2 M'N. & G. 247.

Cases cited in the judgment: *Jones v. Davis*, 16 Ves. 262; *Evans v. Harris*, 2 V. & B. 361; *Harland v. Emerson*, 8 Bl. N. S. 62; *Srood v. Deacon*, 1 Ves. 37.

See *Adverse Title*; *Legal Title*; *Prescriptive Title*.

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DEFECTS IN THE CONSTITUTION OF THE COUNTY COURTS.

THE project of establishing and extending local Courts has been almost annually under the consideration of Parliament for upwards of 20 years, and even prior to that time there were repeated proposals to enlarge the jurisdiction of the old County Courts, confined as they were to 40s. The modern Courts of Request, existing in various parts of the country, were generally limited to very small debts,—most of them to 2*l.* or 5*l.*, some to 10*l.*, and a few to 15*l.* In these and the several ancient local Courts, a vast multitude of petty cases were heard and decided, perhaps not much short in number (considering the rapid increase of wealth and population) to those now heard before the new County Courts.

It was, no doubt, desirable that a uniform system should be established, and if the jurisdiction of the new Courts had been limited to 10*l.*, and the fees in the Superior Courts had been diminished, and the proceedings simplified and expedited, all might have been well. By raising the jurisdiction to 20*l.* and appointing none but barristers to the office of judge, many of them able and ambitious men, and all desirous of adding to their station and its rewards, a result followed which might have been, and by some was, anticipated. It became the palpable interest of the 60 new judges, with their numerous staff of clerks and treasurers, to extend their jurisdiction, because more important duties would of course increase their honour and emolument.

Thus, we have several hundred gentlemen busily at work to transfer a large share of legal business from Westminster Hall to the provinces. Not a few of these gentlemen possess considerable influence in the

public press. A popular cry was raised, or rather incessantly kept up and magnified, against the expense and delay of the Superior Courts, whilst at the same time the County Courts were represented as affording a cheap and immediate remedy for the alleged grievance. The uncertain practice, the expense, the inconvenience, and objectionable constitution of the new tribunals were unnoticed. Within little more than two years from the commencement of operations under the first Small Debts' Act—and even whilst the rules of practice were so unsettled that Lord Chancellor Cottenham had appointed five of the judges to revise them—the second act was clamorously passed, in opposition to the voice of the Government, extending the jurisdiction to 50*l.*, being more than double the original amount, and converting that which was expressly designed for the small suitor and a poor man's Court into one of far superior importance both in regard to the amount and the subject-matter of litigation.

The business of the District Insolvency Courts was also transferred to the County Courts; next they desired to undertake the whole of the country bankruptcy business, the management of twenty thousand charitable trusts, and (as if these were not enough) a large share of equitable jurisdiction was sought for. Such has briefly been the progress of these Courts, which by the title of the act constituting them were expressly limited to "the recovery of small debts and demands."

It is well that the further extension of their jurisdiction has been postponed. The Common Law Commissioners have already made one report, and before the next Session it may be expected they will make another, and that the Chancery Commissioners will also have reported on the matters referred to them. We shall then

have a somewhat complete view of the state of all the Superior Courts of Law and Equity, of the expense connected with them, their defects, and the remedies proposed, and the legislature will then be enabled to judge of the expediency of any further enlargement of the powers of the local Courts. The time, indeed, has passed for petty and piece-meal reforms of the law. They should now be considered with regard to a comprehensive and general review of our whole system of jurisprudence.

It will be in the recollection of our earlier readers that the local Courts in the Principality of Wales and the county of Chester were abolished in order to obtain *uniformity* in the administration of justice and to secure the *impartiality* of the judges. In Lord Brougham's celebrated speech upwards of 20 years ago, many eloquent passages will be found denouncing the influence unavoidably exercised over the minds of judges who always went the same Circuit,—the friendships formed with some, and the prejudices excited against others, which would either actually bias their judgment or excite doubts of their impartiality. On these, and such like arguments, many Courts of extensive jurisdiction were abolished and their duties transferred to the Courts at Westminster.

Now the constitution of the County Courts is directly in the teeth of these acts of the legislature. Each judge has his own Circuit, and if he is a gentleman and a man of ability, he will be sure to form friendships amongst the principal inhabitants of his district, and will have or be supposed to have partialities and prejudices often inimical to the fair decision of the questions before him.

But, more than this, he is *not independent* in his appointment. The amount of his salary is entirely subject to the will of the Ministers of the day, and perhaps unavoidably so. In some districts the full salary limited by the act may not be too much for the labour, whilst in others one-half may be sufficient, and supposing each Circuit had its specific salary, measured by the estimated duty to be performed, there would then be the patronage connected with the removal from a poor to a comparatively rich Circuit. In either case the principle of independence is broken in upon.

It cannot be denied that the great boast of the Law of England, "that it provides a remedy for every injury," is materially qualified by the important consideration of the expense to be incurred and the time occu-

ried in procuring redress. The period has not yet arrived for the state to administer justice between individuals at the general expense. Our ancestors submitted to the slow progress and heavy charges of actions and suits, and were content in return to receive sound law from the highest tribunals. The demand is now for *cheap* and *speedy* (so called) justice.—Extremes meet. A system which has been in progress for many centuries is now to be swept away. Juries, as the arbiters of facts, are to be superseded. Judges who possess entire independence, who have studied during a long life the principles of law, who have acquired vast experience, and established uniform and consistent rules, by which to guide future decisions,—who have by sound constructions removed a multitude of doubts, and formed a beaten path by which they as well as their successors may walk :—All these safeguards to the public, in the due and well regulated administration of justice, are to be changed, and the rights and interests of the suitors confided to the sole judgment of a local judge, of inferior rank and experience, subjected to the influence of his friends and neighbours, liable to partialities and prejudices, exercising for the most part an arbitrary, uncontrolled, and uncertain discretion, and depending upon the will and favour of the Government for the amount of his salary!

Such is now the state of the question to be considered as well by the public as the profession.

Regarding our future prospects in the improvement of our code both of Law and Equity, it is consolatory to know that there are now seven judges in the Court of Chancery, and that next Term we shall see no less than five Courts continually sitting, and that the Lord Chancellor, relieved from the pressure of many long appeals, and reserving himself for cases of special importance, will be able, we trust, to devote a considerable share of his attention to the further projected alterations of the law, and we may reasonably expect that the several bills which were postponed in the last Session, will be entirely remodelled, and accompanied by many other provisions which may satisfy the claims of justice and effect a lasting and systematic improvement.

From these general considerations, we turn to another subject. It will be recollected that *The Times* newspaper has been one of the foremost to support the establishment of County Courts; but we observe that, at the close of this Session, it

has taken a general review of the nature and constitution of those Courts, and has in several articles made some important observations which we deem it necessary to record in these pages, bearing on the want of independence and impartiality of the local judges. These observations deserve peculiar consideration, not only for the ability with which they are written, and the importance of the journal in which they appear, but for the evidence they afford of a sounder view than has of late been taken of the permanent interests of the public on the subject of Law Reform. Generally well acquainted with the prevailing opinions, and often leading them, these remarks of *The Times* may be received as indicative that the future treatment of this grave and weighty matter will be guided in a prudent and comprehensive spirit. The following are the passages referred to:—

"During the late debates on the County Courts Bill the House of Commons evinced a very natural and wise jealousy with respect to various suggestions and proposals touching the means of appeal from the decisions of the County Court Judges. These suggestions appeared for the most part to have but one object in view—viz., to bring back business to Westminster Hall or to keep it there; the public good resulting from the *certainly and similarity of the law throughout the kingdom* evidently being but a secondary consideration, and a topic insisted on only as a means of furthering the professional purpose of making and preserving business. Now to get rid of the expensive and dilatory process of the Superior Courts, and to substitute in its place a cheap and expeditious procedure, was the one great end of the new measure; and when the House of Commons perceived that the very efficiency of the act caused complaint against it, and suggested the schemes proposed as improvements, they very naturally turned a deaf ear to the lamentation and the pretended remedy. It was plain that there was no use in making the process at its commencement cheap and expeditious, if by means of an appeal it could be rendered eventually expensive and dilatory. The old evil, in fact, would thus be restored, and any litigant, with money in his pocket, enabled to defeat the claims, however just, of his poor creditor. The County Courts would, in effect, have been repealed by so insidious a proposal.

"We must, nevertheless, allow that the *evil* pointed at on the occasion to which we refer does exist. We admit, also, that unless proper precautions be taken, it may well to great magnitude and very much diminish the benefit conferred on the public by the new system of justice. But what are proper precautions is the important inquiry. Let us, in the first place, state some things we ought not to strive for. We ought not to make business in Westminster Hall; we ought not to promote delay,

expense, or vexation; but our object ought to be to give to the decision of the County Court Judge such a character, as to obtain for it respect and acquiescence. We should endeavour to effect this object, not by rendering an appeal impossible, but unnecessary.

"Erect a tribunal from which there is no appeal, place the judge on the judgment seat, unattended by any audience for whose professional opinion he has a regard, and you will soon find that you have enthroned caprice, and given to partiality and passion uncontrolled dominion. On the other hand, if the judge knows that all his decisions as regards the law are subject to revision—if the mode of that revision be cheap and expeditious—he will strive upon all occasions to follow the law, and thus render unnecessary the appeal to which all his legal judgments are subject. That system of appeal is the most efficient in which, for this reason, the fewest appeals occur. In every case submitted to a judge for decision there is a question of fact and a question of law. The effects of a decision as respects the facts are confined to that single case, but a decision as to the law which governs that state of facts is a general rule which applies to all future similar instances. An error, therefore, with respect to a matter of this latter class is of unspeakable importance, and is a mischief that ought carefully to be guarded against.

"As respects the facts of a case, the power of re-hearing should be allowed the County Court Judge; and the ordinary safeguards of publicity and the sharp eyes of an attendant Bar must be trusted as the means of insuring a just decision. When, however, the complaint is that the law has not been followed, allowing the facts to be as found by the judge, then a special case should be framed, and signed by the judge and the parties or their agents, and transmitted, together with the judgment of the Court in the case, to the Court of Appeal, whose duty would be to decide whether the judgment so given was in accordance with the law or not.

"Having made the first and a most important step in reconstituting our judicial system, it behoves us to take measures for rendering the change safe, and then sufficiently extensive. But sufficiently extensive it never will be unless the safety of the proceedings be not provided for. *The whole of our system is at present dislocated, and uncertainty in various shapes will immediately be apparent in consequence.* Disputes will arise between neighbouring jurisdictions. County Court A will declare itself properly called upon to decide in a matter which County Court B formally declares to be specially and peculiarly within its own jurisdiction—contradictory and simultaneous judgments are given. Shall precautions not be taken to decide between these contending authorities, and put an end to such unseemly and mischievous disputes?

"Again, complaints are made against a Judge of a County Court. Such an occurrence we now know to be possible—are we to allow so

grave a matter as a decision upon the character and conduct of a judge to be exercised simply in accordance with the caprice, or unaided, uncontrolled judgment of any irresponsible person, however worthy or exalted? No judge can be removed from the Bench at Westminster Hall but upon the resolution and address of both Houses of Parliament. But what protection have the County Court Judges against mistake or injustice? The very merits of a judge may raise up against him a host of unworthy enemies. A man of timid character will, in such circumstances, if he finds a formidable association or conspiracy formed to oust him from his office, quail before the attack, and learn to shape his conduct so as to make it agreeable to sinister but powerful interests. Where in such circumstances is the boasted purity of our judiciary to seek protection? Or how can a judge be either fairly attacked or fairly defended? The simple and self-acting protection both for the public and the judge is in a well constituted Court of Appeal. A corrupt judgment would there instantly find rebuke; an erroneous one, rectification; calumny would be before such a tribunal be dumb and powerless, but well-grounded complaint would bring instant redress.

"The present unsettled condition of our system is fraught with another mischief, not perhaps immediate, but nevertheless one which, should matters remain as they are, will inevitably occur. Even from the extensive choice now presented to those whose duty it has been to select judges for these new tribunals, competent persons have not always been easily obtained; but if the uncertainty which now hangs over the whole legal profession is to continue, that choice which is now extensive will quickly be narrowed, and the task of finding instructed persons will daily become more difficult. If, however, the County Courts have assigned to them the powers contemplated by those who framed the many bills respecting them presented to parliament this session; if they are to have a still wider contentious jurisdiction; if they are to be Courts of Equity as well as of Law, and of Bankruptcy also, then indeed each Court will attract to itself a body of professional men which will in the aggregate afford a means of selection as wide and as worthy as that at present existing. The County Court Judges ought in that case to be permitted to look for promotion in the judicial hierarchy, and not be induced to confine their hopes and views to the narrow sphere of a provincial officer. Such precautions being taken, the profession of the law would still be a liberal profession; justice would, as now, be administered by men above all suspicion; and the law itself, while cheap and ready of access to all, would preserve throughout the country the reality as well as the semblance of uniformity, without which it will soon prove a curse in place of a blessing

"The breath of suspicion has never for centuries dimmed the brightness of judicial honour.

To attempt solicitation with an English judge would, in the opinion of every man, be to commit a species of sacrilege—utterly inefficacious as well as impious. This character of the judiciary created in the public mind that happy feeling of security which is, or ought to be, in fact, the great end of all law; and every one who has endeavoured to improve our judicial system has always so shaped his proposed alterations as to preserve in all its efficiency the judicial system of Westminster Hall. Every proposal has been therefore of necessity, piecemeal, and so contrived as to meet only some special and peculiar difficulty. Among the most important of these partial reforms was the proposal to establish local or County Courts, having a very limited jurisdiction. By this measure two great advantages were expected to be obtained. A multitude of creditors for small amounts would, it was thought, be enabled to obtain that which was due to them, while, at the same time, the Courts and judges of Westminster Hall would be preserved in all their efficiency, and all the important litigation of the country would still be submitted to these much-honoured tribunals.

"Any consequences beyond the immediate benefit of a cheap mode of enforcing small debts were not thought of. The new Courts were looked upon as chapels of ease to the existing Law Courts, and the new proposal because a piecemeal plan, was but the more favoured. If they who proposed it had pretended to make it part of a systematic, symmetric proceeding, they would inevitably have aroused an invincible opposition. They were favoured and supported, because they appeared to be, and really were, most unskilful reformers. The result of this first attempt was in the public opinion so beneficial, that another soon followed to extend the jurisdiction of these new Courts, by giving them power to adjudicate in cases of debt under 50*l*. This proposal, also, was successful. But now came a consequence not at all foreseen, illustrating, among other things, the mischief that must inevitably follow upon attempting a great judicial change after this rude fashion.

"Cheapness is not the only quality required by those who seek to obtain their rights by litigation. In addition to cheapness and rapidity is the not less important quality of certainty; and by this end of certainty the whole character of the tribunal must be tested.

"Under the present system of County Courts, no precautions have been taken to provide for this important element of justice. The judge, except in certain peculiar cases, may decide as he pleases. There is no bar before him whose opinions he respects, there is no Appeal Court to regulate his decisions. Against mere temper, against corruption, our old system most completely provided; against delay, vexation, and expense it, unfortunately, was armed with no protection. It has, consequently, been superseded; but now a new

class of mischiefs will arise, of a nature even more formidable than the old-fashioned evils of delay and ruinous expense. We shall have as many systems of law as there are separate County Courts. One judge may be irascible, another apathetic; one ignorant, another learned; one corrupt, another honest; fashion, favour, passion, intelligence, or rather the degree of it, will all influence judicial decisions, and, no control, no saving, guiding supervision existing, the wildest anarchy under the name of law will reign supreme throughout the land.

"Let us for the moment take the most starting, and therefore the least probable mischief, that of corruption, and endeavour to illustrate some of the possible effects of the new system. A judge's honour is at the present time in England deemed a subject quite as delicate as that of a woman, and whoever should now presume to insinuate that any one of those who fill the judgment-seat was corrupt would, by the public clamour, be at once compelled to adduce his proofs or submit to ignominious rebuke. When sitting in his judicial character, who now dares to approach a judge but with the most reverent aspect? Who treats him with familiarity? Who, in connexion with the ordinary business of life, ever addresses him on the judgment-seat? But does any one believe that such is the case with a County Court Judge? He, by the present arrangement, lives continuously in the same neighbourhood; mingles in its society; is influenced by its many little feelings, and is known to be within reach of the many prepossessions to which that society is subject. Does any one suppose that under these circumstances he will be believed to be above social influences? Or that the poor man who never dines with him, or sees him except in Court, is likely to have a full measure of justice when opposed to the constant companion and frequent host of his judge? If, in this case, corruption does not take place, *it will be believed to exist*; and, say what we will, except when a man of extraordinary courage and inflexible purpose is found acting as a County Court Judge, the social influences to which he is subject will guide his decisions, and make that in fact corrupt which ought to be, and now is, above all suspicion."

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

REGISTRATION OF COMPOUND HOUSEHOLDERS.

14 & 15 VICT. C. 14.

Persons having once claimed to be rated in respect of premises, and paying or tendering, on or before 20th July, the rates due 5th Jan. preceding, not required to renew such claim; s. 1.

The liability of the claimant to rates to continue so long as he occupies the premises and remains on the register; s. 2.

Compositions with landlord to determine amount of rate to which tenant is liable; s. 3.

The clauses of the act are as follow:—

An Act to amend the Law for the Registration of certain Persons, commonly known as "Compound Householders," and to facilitate the Exercise by such Persons of their Right to vote in the Election of Borough Members to serve in Parliament. [3rd July, 1851.]

1. Whereas by an act passed in the 3 & 4 W. 4, c. 45, intituled "An Act to amend the Representation of the People of England and Wales," it is enacted, that no person shall be registered to vote for members to serve in parliament in any year in respect of the occupation of premises in any city or borough unless such person shall have been rated in respect of such premises to all rates for the relief of the poor in the parish or township where the same are situated made during the time of such his occupation, nor unless such person shall have paid, on or before the 20th of July, in such year, all the poor's rates and assessed taxes which shall become payable from him in respect of such premises previously to the 6th day of April then next preceding: And whereas the said act was amended, in so far as relates to the period when such rates and taxes shall be required to be paid, by an act passed in the Session held in the 11 & 12 Vict. c. 90, intituled "An Act to regulate the Times of Payment of Rates and Taxes by Parliamentary Electors:" And whereas by the said firstly-recited act it is further enacted, that it shall be lawful for any person occupying premises in any city or borough which shall return a member or members to serve in any future parliament to claim to be rated to the relief of the poor in respect of such premises, whether the landlord shall or shall not be liable to be rated to the relief of the poor in respect thereof, and upon such occupier so claiming, and actually paying or tendering the full amount of the rate or rates, if any, then due in respect of such premises, the overseers of the parish or township in which such premises are situated are thereby required to put the name of such occupier upon the rate for the time being, and in case such overseer shall neglect or refuse so to do such occupier shall nevertheless for the purposes of the said act be deemed to have been rated to the relief of the poor in respect of such premises from the period at which the rate shall have been made in respect of which he shall have so claimed to be rated as aforesaid: And whereas it is often inconvenient or impracticable for such persons to make continual claim in respect of each rate, and many persons are consequently deprived of the franchise: Be it therefore enacted, That from and after the passing of this act no person so claiming to be rated, and paying or tendering on or before the 20th day of July in each year, the full amount of the rate or rates (if any) due

in respect of such premises on the 5th day of January preceding, shall be required to make any further claim in regard to any future rate upon the premises in respect whereof his right to vote in any such election as aforesaid shall arise, but shall be entitled to be put on the list and to be registered as a voter, provided he shall have occupied the premises in the manner and for the time required by the said firstly-recited act, and provided the poor's rates and assessed taxes chargeable upon the same shall have been paid for the period and up to the time required by law in respect of all persons entitled to vote in the election of members of parliament for any borough under the provisions of the said firstly-recited act.

2. Provided always, and be it enacted, That every person so claiming as aforesaid who shall be registered as a voter in respect of the premises to which his claim relates shall, in respect of every rate for the relief of the poor made and published after such claim as aforesaid, while he continues to occupy the same premises and to be a registered voter in respect thereof, be liable to the same extent and in the same manner as in respect of the rate published next before the making of such claim.

3. Provided always, and be it enacted, That in cases where by any composition with the landlord a less sum shall be payable than the full amount of rate which, except for such composition, would be due in respect of the same premises, the occupier claiming to be rated shall not be bound to pay or tender more than the amount then payable under such composition.

NEW RULES AND ORDERS

OF THE COUNTY COURTS.

[Concluded from p. 339, ante.]

141. *New Trial*.—9 & 10 Vict. c. 95, ss. 80, 89.—An application for a new trial or to set aside proceedings may be made and determined on the day of hearing, if both parties are present, or may be made at the first Court held next after the expiration of 12 clear days from such day of hearing, and the party intending to make such application shall, seven clear days before the holding of such Court, deliver a notice in writing, signed by himself, his attorney, or agent, stating the grounds of his intended application, and also the Court at which such application is proposed to be made, to the clerk at his office, and give a similar notice to the opposite party by serving the same personally on such party, or by leaving the same at his place of abode or business, and such notice shall not operate as a stay of proceedings, unless the judge shall otherwise order; and if money be paid into Court under any execution or order in the suit, the clerk shall retain the same to abide the event of the application aforesaid, and if no such application be made, the money shall, if required, be paid over to the party in whose favour the order was made, unless the judge shall otherwise

order; and if such application be not made at the Court mentioned in the notice, no subsequent application for a new trial or to set aside proceedings shall be made, unless by leave of the judge, and on such terms as he shall think fit.

142. The fee payable for an application for a new trial, or to set aside proceedings, shall be paid by the party intending to make such application at the time of giving notice of his intention so to apply.

143. Where a new trial is granted, the judge may in his discretion make it a condition of granting such new trial, that it shall take place before a jury, although the former trial did not take place before a jury.

144. In all cases where security is required to be given in any proceeding in the County Court, whether under section 127 of 9 & 10 Vict. c. 95, or in any other case, such security shall be at the expense of the party giving it.

145. *Interpleader*.—9 & 10 Vict. c. 95, s. 118.—Where any claim is made to or in respect of any goods or chattels taken in execution under the process of any County Court, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, and summonses have been issued on the application of the officer charged with the execution of such process, such summonses shall be served in such time and mode as hereinbefore directed for a summons to appear to a plaintiff, and the claimant shall be deemed the plaintiff, and the execution creditor, the defendant; and the claimant shall, five clear days before the day on which the summonses are returnable, deliver to the said officer, or leave at the office of the clerk of the Court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or in case of a claim for rent, of the amount thereof, and for what period, and in respect of what premises, the same is claimed to be due, and the name and description and address of the claimant shall be fully set forth in such particular, and any money paid into Court under the execution shall be retained by the clerk until the claim shall have been adjudicated upon: Provided that, by consent, an interpleader claim may be tried, although the above rule has not been complied with.

146. *Interpleader summonses* may be issued by the clerk, on the application of the bailiff, without leave of the Court.

147. *Interpleader summonses* shall be issued from the Court of the district in which the levy was made, and the execution creditor and claimant may be summoned to such Court, without leave of such Court.

148. Where the claim to any goods or chattels taken in execution, or the proceeds or value thereof, shall be dismissed, the costs of the bailiff shall be retained by him out of the amount levied, unless the judge shall otherwise order.

149. *Appeal*.—13 & 14 Vict. c. 61, s. 14.—Any party dissatisfied with the determination

or direction of the Court, in point of law, or upon the admission or rejection of any evidence, may, before the rising of the Court on the day of the trial, deliver to the clerk a statement in writing, signed by him, his counsel or attorney, containing the grounds of his dissatisfaction; and in default of such statement being delivered as aforesaid, the successful party may proceed on the judgment unless the judge shall otherwise order; but it shall be competent for the judge to direct proceedings to be taken on the judgment notwithstanding such statement has been delivered: Provided always, that the party so dissatisfied may appeal, on grounds different from those contained in such statement, and although he shall not have delivered any such statement.

150. The ten days within which notice of appeal may be given, shall be reckoned, exclusive of the day of trial.

151. The notice of appeal shall be in writing, and shall state the grounds on which the party appeals, and shall be signed by the appellant, his attorney or agent, and such notice must be served on the clerk as well as on the successful party, by prepaid post letter, or otherwise.

152. If before notice of appeal as aforesaid is served upon the clerk, execution shall have issued and the amount of the judgment and costs of execution shall have been paid into the hands of the bailiff, or levied and not paid over to the successful party, the same shall remain in Court to abide the order of the Court.

153. If before an appealing party shall have given the required security, execution shall have issued, the clerk shall, upon the appealing party giving such security, forthwith send notice thereof by prepaid post letter or otherwise to the bailiff, and proceedings on such execution shall forthwith be stayed.

154. The security on appeal, required under sect. 14 of the 13 & 14 Vict. c. 61, may in all cases be either a deposit of money or a bond executed by the appellant and two sureties, conditioned in conformity with the provisions of the statute, and which shall be substantially in the form in the schedule.

155. In all cases of appeal, where the appellant proposes to give a bond, he shall serve by prepaid post letter, or otherwise, on the opposite party and the clerk, at his office, notice of the sureties whom he proposes to submit for the approval of the clerk; and such notice shall contain the matters stated in the form in the schedule.

156. The sureties shall, unless by consent of the successful party, make an affidavit of their sufficiency in the form in the schedule.

157. The bond shall be executed in the presence of the clerk, or some one of the persons mentioned in sect. 23 of 13 & 14 Vict. c. 61: Provided always, that if it be executed in the presence of the clerk, it shall not be necessary for him to attest the same.

158. At the time of giving security, the appellant shall deliver to the clerk a statement in writing, showing to which of the Courts of Common-law at Westminster he proposes to appeal.

159. The successful party shall be the obligee of the bond, and it shall be deposited with the clerk, until the cause is finally disposed of.

160. Where the appellant makes a deposit of money in lieu of giving a bond, he shall forthwith give notice to the opposite party, by prepaid post letter or otherwise, of such deposit having been made.

161. Where money is paid into Court to abide the event of an appeal, whether by way of security or in pursuance of an order of the judge, the clerk shall give the party paying it a written acknowledgment of such payment.

162. All cases shall be signed by the judge, and shall be presented to him for signature, unless he shall otherwise order, at the Court next after 19 clear days from the giving such determination or direction, and sealed with the seal of the Court; and when signed and sealed, one copy thereof shall be deposited with the clerk, and another sent by prepaid post letter or otherwise, by the appellant, to the successful party within three clear days next after the time of signing and sealing the same; and if the appellant does not comply with this rule, the successful party may proceed on the judgment unless the judge shall otherwise order.

163. The appellant shall, within three clear days next after the case is signed and sealed, transmit two copies thereof, by post or otherwise, in conformity with the provisions of sect. 15 of the 13 & 14 Vict. c. 61; and notice of such transmission shall forthwith be served by the appellant on the successful party, by prepaid post letter or otherwise; in default whereof the successful party may proceed on the judgment, and shall, on application to the Court, be entitled to such costs as he shall have incurred in consequence of the appellant's proceedings: Provided that instead of proceeding on such judgment, the respondent, if he thinks fit, may, within 28 clear days from the signing of the case, transmit it in the manner prescribed, and give the like notice to the appellant of such transmission.

164. If after the case has been transmitted, the appellant does not prosecute his appeal with due diligence, according to the practice of the Court of Appeal, the party successful in the County Court may apply to the judge thereof for leave to proceed on the judgment, and leave for that purpose may be granted accordingly, if the judge shall think fit; and the successful party shall also be entitled to such costs as he shall have incurred in consequence of the appellant's proceedings, which costs shall be added to the judgment.

165. When the Court of Appeal has pronounced judgment, either party may deposit the original order of the Court of Appeal, or an office copy thereof, with the clerk of the County Court, and within 48 hours from the time of such deposit, give notice thereof in writing to the other party, by prepaid post letter, or otherwise.

166. A new trial in pursuance of the order of the Court of Appeal shall be entered for

trial at the County Court which shall be held next after 12 clear days from the time when such order or office copy thereof shall have been deposited as aforesaid, unless the parties agree that it shall take place sooner, or the judge shall otherwise order, and it shall be conducted in the same manner as any new trial granted by the County Court itself.

167. If the order of the Court of Appeal be, that judgment shall be entered for either party, then such judgment shall be entered accordingly, and the successful party shall be at liberty to proceed on such judgment as upon a judgment of the County Court.

168. *Abatement.*—Where one or more of several plaintiffs or defendants dies before judgment, the suit shall not abate, if the cause of action survive to or against such parties.

169. Where one or more of several plaintiffs or defendants shall die after judgment proceedings thereon may be taken by the survivors or survivor, or against the survivors or survivor, without leave of the Court.

170. Where a married woman is sued as a *feme sole*, and she obtains judgment on the ground of coverture, proceedings may be taken thereon, in the name of the wife, at the instance of the husband, without leave of the Court.

171. Where the plaintiff has become bankrupt or insolvent before judgment, the cause may proceed to judgment, at the instance of the assignee, in the name of the plaintiff.

Applications or Proceedings in the nature of a Scire Facias.

172. *Proceedings in nature of a Scire Facias.*—Execution on a judgment shall not issue by or against any person not a party to such suit, without a plaint and summons upon the judgment, the proceedings in which shall be the same and shall be subject to the payment of the same fees, except the General Fund fee, as in ordinary cases.

173. Where a judgment has been given for or against a person deceased, his executors or administrators may in the same manner sue or be sued upon the judgment.

174. In all proceedings in the nature of a *scire facias*, a jury may be summoned in the same manner and under the like restrictions as are provided by sects. 70, 71, 72, and 73, of 9 & 10 Vict. cap. 95.

[For proceedings on judgment for penalties under the 8 & 9 Will. III. c. 11, see Rule 28.]

175. *Proceedings by and against Executors and Administrators.*—9 & 10 Vict. c. 95, s. 66.—In actions by executors or administrators, if the plaintiff fail, the costs shall, unless the Court shall otherwise order, be awarded in favour of the defendant, and shall be levied *de bonis propriis*.

176. Where an executor or administrator, plaintiff or defendant, shall not appear on the day of hearing, the provisions of sects. 79 & 80, of the 9 & 10 Vict. c. 95, and of sect. 10 of the 13 & 14 Vict. c. 61, shall apply respectively, subject to the rules applicable to executors or administrators suing or being sued.

177. A party suing an executor or administrator, may charge in the summons in the form in the Schedule, that the defendant has assets, and has wasted them.

178. In all cases, if the Court shall be of opinion that the defendant has wasted the assets, the judgment shall then be, that the debt or damage and costs shall be levied *de bonis testatoris, si &c., et si non, de bonis propriis*, and the non-payment of the amount of the demand immediately, on the Court finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable.

179. Where an executor or administrator denies his representative character, or alleges a release to himself of the demand, whether he insists on any other ground of defence or not, and the judgment of the Court is in favour of the plaintiff, it shall be that the amount found to be due and costs shall be levied *de bonis testatoris, si &c. et si non, de bonis propriis*.

180. Where an executor or administrator admits his representative character, and only denies the demand, if the plaintiff prove it, the judgment shall be, that the demand and costs shall be levied *de bonis testatoris, si &c., et si non*, as to the costs, *de bonis propriis*.

181. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be to levy the costs of proving the demand *de bonis testatoris, si &c., et si non, de bonis propriis*; and as to the whole or residue of the demand, judgment of assets, *quando acciderint*; and the plaintiff shall pay the defendant's costs of proving the administration of assets.

182. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does not prove the administration alleged, the judgment shall be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si &c., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint*.

183. Where a defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, and proves the administration alleged, the judgment shall be for assets *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets.

184. Where a defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, but does not prove the administration alleged, the judgment shall be to levy the amount of the demand, if so much assets is

shown to have come to the defendant's hands, or so much as is shown to have come to them, and costs, *de bonis testatoris, si &c., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint*.

185. Where judgment has been given against an executor or administrator, that the amount be levied upon assets of the deceased *quando acciderint*, the plaintiff or his personal representative may issue a summons in the form in the Schedule, and if it shall appear that assets have come to the hands of the executor or administrator since the judgment, the Court may order that the debt, damages, and costs be levied *de bonis testatoris, si &c., et si non*, as to the costs, *de bonis propriis*. Provided, that it shall be competent for the party applying to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in Rule 177, and the provisions of Rule 178, shall apply to such inquiry, and the Court may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si &c., et si non, de bonis propriis*.

186. Where a defendant admits his representative character, and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into Court, subject to the rules relating to payment into Court in other cases.

187. In actions against executors or administrators for which provision is not hereinbefore specially made, if the defendant fails as to any of his defences, the judgment shall be for the plaintiff as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris, si &c., et si non, de bonis propriis*.

198. *Notices*.—Where by these Rules any party is required to give notice according to a form mentioned in the Schedule, it shall be sufficient if the notice given complies substantially with such form.

189. In all cases where any notice or thing is required by these Rules to be given or done within a period of 24 hours, such period shall be understood to mean 48 hours if any part of Sunday, Good Friday, or Christmas Day, or any day appointed by royal proclamation for a public fast or thanksgiving, is included in such 24 hours.

190. *Statute of Limitations*.—Successive summonses may be issued without leave of the Court for the purpose of preventing the operation of any statute, whereby the time for the commencement of any action is or may be limited, and such summonses shall be in force for four calendar months from the time of issuing the same, including the day of such issuing, and shall be issued before the expiration of the previous summons and entered in the plaintiff book of the Court: Provided, that on entering the plaintiff in the first instance, the usual fees shall be paid, as if the defendant resided within two miles of the Court; but for every successive summons no further fee shall be paid, nor

shall it be necessary that any attempt be made to serve such summonses, unless the plaintiff requires the same, when the proper bailiff's fees for such service shall be paid, in addition to those already received; and such successive summonses, when so entered, shall be a continuance of the action from and inclusive of the day on which the first summons was issued.

Removal of Cause.—[See New Trial, Rule 141, and Replevin, Rules 197, 198.]

191. *Arbitration*.—9 & 10 Vict. c. 95, s. 77.—Where a plaint is entered, the judge may, with the consent of the parties, as well in cases within the ordinary jurisdiction of the Court as in cases of consent under sect. 17 of the 13 & 14 Vict. c. 61, make an order for a reference under the provisions of sect. 77 of the 9 & 10 Vict. c. 95, without awaiting the return of the summons, and all the provisions in the said last-mentioned act contained and all rules of practice of the Court as to references shall apply to a reference proceeding under such and order; provided, that the same fees shall be paid as on the hearing of the cause.

192. *Replevin*.—In actions of replevin no other cause of action shall be joined in the summons.

193. 9 & 10 Vict. c. 95, s. 119.—On entering a plaint in replevin, the plaintiff must specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken under the distress, and of the taking of which he complains.

194. All actions of replevin in cases of distress for rent in arrear, or damage *faisant*, shall be tried in a summary way as other actions in the Courts held under the authority of the act of the 9 & 10 Vict. c. 95, and the judgment therein, in ordinary cases, whether for plaintiff or defendant, shall be according to the forms in the Schedule.

195. Where the distress has been for rent, and the defendant succeeds in the action, if the defendant requires, the judge shall, if the cause is tried without a jury, and the jury shall, if the cause be tried with a jury, find the value of the goods distrained, and if the value is less than the amount of rent in arrear, judgment shall be given for the amount of such value; but if the amount of the rent in arrear is less than the value so found, judgment shall be given for the amount of such rent, and may be enforced in the same manner as any other judgment of the Court.

196. Where the distress was for damage *faisant* and the defendant is entitled to judgment for a return, if the plaintiff require, the judge shall, if the cause is tried without a jury, and the jury shall, if the cause is tried with a jury, find the amount of the damage sustained by the defendant, and judgment shall then be given in favour of the defendant, in the alternative, for a return, or for the amount of the damages so found.

197. 9 & 10 Vict. c. 95, s. 121.—Where either party is desirous of removing any plaint in replevin, in pursuance of sect. 121 of the 9 & 10 Vict. c. 95, he shall, at least five clear days be-

fore the return day of the summons, deliver to the clerk two copies of a notice, signed by himself, his attorney, or agent, stating the removal of such removal, together with the names of the two sureties whom he is proposing to be bound with him, in the form set out in the schedule, and the clerk shall forthwith transmit one of the said copies of the said notice to the opposite party or parties, by pre-paid post letter, and unless such notice is given, the party removing shall pay all the expenses to which the opposite party has been put in consequence of such non-compliance with this Rule, unless the judge shall otherwise order; and in case a reasonable time has not been allowed to enable the clerk to ascertain the sufficiency of the sureties, the cause shall be postponed at the expense of the party seeking to remove, or upon such terms as the judge shall think fit.

198. 9 & 10 Vict. c. 95, s. 121.—The amount of the sum for which the security is taken shall, unless the judge shall otherwise order, be the same as that of the security given to the sheriff, and such security shall be given at the expense of the party seeking to remove.

Recovery of tenements.—9 & 10 Vict. c. 95, s. 122.—All claims for the recovery of the possession of tenements shall be brought in the district wherein the tenements are situated.

200. 9 & 10 Vict. c. 95, s. 122.—Warrants for giving possession of tenements shall bear date of the day named by the judge for the issuing thereof, and shall issue to the bailiff, requiring and authorising him to give possession of the premises, within a period therein named, which shall be a period commencing with the date of such warrant, and ending at a time not less than seven, or more than ten days from such date; and the bailiff may execute such warrant forthwith on the receipt thereof, or at any time during the period therein named.

201. 9 & 10 Vict. c. 95, s. 126.—Upon application of a tenant who seeks under sect. 126 of the 9 & 10 Vict. c. 95, to stay execution of a warrant of possession, he must apply for that purpose in person, or by his attorney or agent, to the court, and the judge shall then fix the sum for which security is to be given, and the names and description of the sureties shall be given to the clerk within such time as the judge shall direct, and the giving such security shall be at the expense of the party applying.

202. *Confessions under 13 & 14 Vict. c. 61, s. 8.*—All confessions to be made under sect. 8 of the 13 & 14 Vict. c. 61, shall be delivered to the clerk five clear days before the return day of the summons: Provided that at any time before the return day of the summons the defendant may make a confession and deliver the same to the clerk, subject, however, to an order by the judge to pay such costs as the plaintiff has incurred in consequence of the defendant not having delivered such confession as hereinbefore required.

203. *Consent to judgments under 13 & 14 Vict. c. 61, s. 9.*—In all cases of consent under

sect. 9 of the 13 & 14 Vict. c. 61, it shall be competent for the defendant to confess the amount of the plaintiff's costs besides the Court fees, and the judgment may be entered accordingly, and the amount of the plaintiff's costs shall be stated separately.

204. *Consent cases under 13 & 14 Vict. c. 61, s. 17.*—Where the parties, in pursuance of 13 & 14 Vict. c. 61, s. 17, agree to try any of the questions therein mentioned, a plaint shall be entered, and a summons issue thereon, as in other cases, and all the rules and practice of the Court shall be adopted in such cases so far as the same are applicable.

205. *Proceedings under the Friendly Societies' Act.*—In cases of reference to the County Court under 13 & 14 Vict. c. 115, s. 22, the party proposing to refer shall enter a plaint, and a summons shall issue thereon, and for the purpose of determining the amount of the subject of the reference the case shall be treated as a debt or demand, for the trial of which the consent of both parties is necessary under section 17 of the 13 & 14 Vict. c. 61, and all the rules and practice of the Court shall be adopted with respect to such matter of reference so far as the same are applicable.

206. *Proceedings under 12 & 13 Vict. c. 108.*—In cases of reference to the County Courts, under 12 & 13 Vict. c. 108, s. 22, to take or receive evidence under the said act, or under the 11 & 12 Vict. c. 35, the same fees shall be payable on such reference as on the entering and trial of a plaint for the trial of which the consent of both parties is necessary, under sect. 17 of the 13 & 14 Vict. c. 61; and all the rules and practice of the Court shall be adopted with respect to such examinations, so far as the same are applicable.

207. *Forms.*—In proceedings for which forms are not provided in the schedule, the clerk of the Court shall use, as guides in framing the forms required, those which are prescribed in the schedule.

208. *Registration of Judgments.*—The clerk of every Court shall, if at any future time the Commissioners of her Majesty's Treasury shall require, transmit to such place and in such form as the said Commissioners may appoint, a statement of the judgments, whether by consent or otherwise, which have been entered for the sum of 10*l.* and upwards at every Court, or between that Court and the Court next preceding; and such statement shall be transmitted within three days from the holding of each Court, and the said clerk shall when required by the said Commissioners also transmit a similar return of all judgments of like amount which have been entered by consent or otherwise, since the 14th of August, 1850.

209. The clerk shall in every such case certify the correctness of the return, and the remuneration for making the same shall be such as the Commissioners of her Majesty's Treasury shall be pleased to appoint and award to be paid out of the fund produced by fees to be appointed to be taken for searches in the said register.

210. *Insolvency*.—The rules of practice and orders in insolvency and protection cases as used by the Court for the Relief of Insolvent Debtors in London, shall be adopted and used as the rules of practice and orders in insolvency and protection cases in the County Courts, so far as the same are applicable to the said Courts.

OBSERVATIONS ON THE PROPOSED REGISTRATION OF DEEDS.

A PAMPHLET has been lately published by Mr. J. Moore of Lincoln, a country solicitor,¹ with the above title, having "reference more particularly to the Pamphlet of William Hazlitt, Esq., Barrister-at-Law." It will be recollected that, during the debates in the House of Lords on the Registration of Assurances Bill, Mr. Hazlitt's pamphlet was noticed with much commendation by some of their lordships. It contained, indeed, an able summary of the arguments in favour of the general principle of registration, but expressly stated that "on points of detail as to which the highest legal authorities still differed, it would ill become him to offer a positive opinion." We did not think it requisite to discuss the merits of a publication which merely advocated an abstract principle and passed by the question of its practicability. But the author of the pamphlet before us has entered into the consideration of the several alleged evils enumerated by Mr. Hazlitt.

As to the alleged *insecurity of titles, the difficulty of obtaining reference to deeds, and the expense and delay in selling or mortgaging land*, Mr. Moore observes that

"Of the few instances of loss which do occur, the most frequent and notorious arise from the suppression of settlements by tenants for life, and from parties representing themselves to be owners of property they have already disposed of, but the deeds relating to which they retain as owners of other property held by them. Comparatively speaking, very few properties are the subject of settlements. The evils, as it respects those few, might be removed by providing that the trustees of a settlement should (as they very well might) have the custody of the deeds relating to the property settled; and the other evil would be obviated by an endorsement on one or more of the deeds retained, affording evidence of the subsale, a precautionary measure now in general practice. Another evil under this head,

alluded to by Mr. H., is that of not being able to obtain production of the original title deeds. This very rarely occurs; and I have found that, whether purchasers have or have not possessed themselves of valid covenants for the production of the original deeds, there is little or no difficulty in procuring such a reference to them as will enable parties interested to verify and support their title; and, moreover, the evil might be in a great measure, if not wholly removed, by abolishing the absurd distinction which exists between covenants which run with the land and those which do not."

Mr. Hazlitt quotes with approbation the Report of the Real Property Commissioners; yet the Commissioners admit that "instances in which, by fraud or mistake, lands are dealt with, without disclosing a prior conveyance or charge, are so rare, that the chance of such a concurrence of circumstances as would be necessary for a case of actual loss to arise is infinitely small." The Commissioners, as well as Lord Campbell, support a General Register, not to remedy an evil arising from actual loss by the suppression of deeds, but to diminish the *expense* of the present system of conveying real property. They describe the evils as involving—

"Inquiries made from the occupiers of the lands, and from persons who have long dwelt in the neighbourhood. County and local histories are examined, searches are instituted for land tax assessments, awards under inclosure bills, grants from the Crown, grants of annuities, records of fines and recoveries, enrolments of deeds, judgments entered up in the several Courts of record, securities given to the Crown, probates of wills and administrations, and various other species of documents. In every case, except where property is too small to make risk important as compared with present expense, investigations of this nature are prosecuted to a great extent; and they occasion a considerable portion of the delay and expense which are felt to be the greatest evils now attending the transfer of real property."

The present author asserts that it is an egregious error to suppose that this is a correct description of the evils generally attending the investigation of titles of real property—

"The statement is founded upon the evidence of gentlemen no doubt supposed to be most intimately acquainted with the subject; and, confining themselves to those titles which are submitted to them, I am not disposed to dispute its correctness: but it is notorious that only such titles as involve intricate and difficult questions are laid before them; and if those gentlemen will take into consideration the fact that of one hundred titles investigated

¹ The statements in the pamphlet being of a contradictory character to many that come from high and respectable quarters, the writer has not felt at liberty to avoid the responsibility incurred, by appearing anonymously, . . .

by the profession they have not in reality an opportunity of seeing more than one, or in some such proportion, that of the remaining ninety-nine they have, and can have no sufficient means of judging, it is surely too much to say that 'in every case investigations of this nature are prosecuted to a great extent.' A correct idea of the practice is to be derived, not from the few long and complicated titles which are submitted to counsel, but from the great mass which they never see; and the conclusion come to on the subject is no nearer the truth, than that which an individual would draw of society, were he to take his evidence and form his conclusions from the Newgate calendar."

With respect to the alleged enormous expense of attested copies of deeds, Mr. Moore observes that—

"Where conveyancing is most generally practised and well understood, little or no expense whatever is now incurred in attested copies; nor in fact is there any necessity for any such outlay, a deed of covenant and a verified abstract being all that is required. The absurd story of a person, having sold a small property to an attorney, finding—when required to furnish attested copies, that the expense would amount to more than the purchase-money, and being in consequence induced to forego his right to the purchase-money, on the purchaser's waiving his claim to the attested copies—serves to show how the advocates of the measure are driven to draw upon their imagination for arguments to support their conclusions. Mr. Hazlitt is too prudent to give this on his own authority, and refers to Lord Campbell as having cognizance of this amusing incident. I have no doubt but that Lord Campbell may have been imposed upon by a statement of this kind, and I know the quarter from which it originates; but if his lordship will take the trouble to inquire of those who are in the habit of making attested copies, he will learn that the purchase-money in this case (which is stated to have been 200*l.*) would have sufficed to have borne the cost of attested copies of no less than 180 deeds of 35 folios each; and he will see at once that no argument in favour of a General Registration can safely be based upon such a statement as this. The party who has abused his lordship's confidence on this point is bound to produce evidence of the fact stated, which I challenge him to do. Apart from the consideration of the truth of the statement, it will be observed that it is one of such an extreme character, that it is not worth regard as justifying the conclusion we are expected to draw from it, and at the same time it will serve to show how hardly the advocates of the measure are pressed for facts to support their case."

On the supposed *depreciation of the value of land* by the expense and difficulty of investigating titles, the writer thus remarks:—

"Mr. Hazlitt refers to the conditions of sale

now in use providing for the production of deeds and attested copies at the purchaser's instead of the vendor's expense as likely to affect very seriously the price of estates. If he was in the habit of attending sales when such conditions are used, he would find his fears on this head perfectly groundless. The daily and increasing use of such conditions is sufficient to show that they entail no loss, but on the contrary a great gain, on the vendors who adopt them.

"In describing the 'impediments to the transfer of lands,' Mr. Hazlitt states, that it results from the insecurity of titles that the market value of estates 'are deteriorated in an inverse ratio to their magnitude; and small estates are unsaleable, from the mere disproportion between their value and the expenses of the transaction. It is not fair, therefore, to represent the plan of a register as necessarily involving an addition to the present expenses attending the transfer of estates.'—Where, I would ask, is the evidence that supports the assertion that small estates are unsaleable from the expense attending the transfer? On the contrary, I would ask, in what country in the world are small estates more saleable, and more frequently met with in the market, than in this? If I could receive this statement as true, or even near the truth, I should not feel bound to admit the necessity for a General Registration; but it is because I am firmly convinced, that, so far from diminishing the expenses attending small transactions of this nature, it would materially increase them, and render small properties more unsaleable than they now are, that I feel bound to enter my feeble protest against the bill. Joining issue with Mr. Hazlitt, and all the other advocates of the bill, on this very important point, I appeal for a verdict—not to the London conveyancer (who, I contend, has very imperfect means of knowing what expenses attend these small transactions) but to the great body of that branch of the profession who are daily employed in them, and above all to the small proprietors, who are so much interested in the question, but whose interests have been wholly overlooked or greatly misunderstood."

Our author next adverts to the citation made from Professor Hancock's observations:—

"The learned professor, referring to the practice of requiring the production of a sixty years' title to land, triumphantly exclaims, 'What would be thought of a law that compelled you to examine the title to the leather every time you bought a pair of shoes? How could the cotton trade be carried on, if the spinner could not buy a bale in Liverpool without tracing the title from the time the plant was grown in Louisiana, and sending to New Orleans to search for incumbrances?' Mr. Hazlitt's readers need not be told that shoes are not the subject of marriage settlements, of mortgages, or entails, nor are portions and legacies secured upon cotton. Mr.

H. contends for a free trade in land, and refers to Belgium, Prussia, and France, as rejoicing in this privilege. But, does he show,—or attempt to show—that there is a quicker or cheaper transfer of real property in those countries than in our own? No such thing. If in those countries land fetches more money in the market than it does here, I believe it to be a sheer delusion to refer this to any facility in the transfer arising from the registration of deeds. In those countries the capitalist has comparatively few opportunities of investment; here the very fact of land (*contrary to the statements and arguments, be it remembered, of all the advocates of registration*) being universally considered the *best and safest* investment, reconciles the capitalist to the lowest rate of interest. In England trade, commerce, manufactures, railway, turnpike and canal shares, insurance and banking companies, three per cent. consols, bank stock, India bonds, water and gas, in vain tempt the landed proprietor with the promise of a higher rate of interest; and yet we are gravely told that the transfer of real property is attended with so much difficulty, insecurity, and expense, that people are deterred from the purchase of it!”

As to the danger of *forgery, substitution of deeds, concealment of rights, and litigation*, the writer says—

“With reference to the *forgery and substitution of deeds*, it is obvious—Mr. Hazlitt remarks—‘that these documents cannot with absolute safety be left in the possession of those who may be gainers by destroying or altering them; and that such possession affords a dangerous facility of fabricating other instruments.’ It is not surely seriously meant to be contended that a man cannot safely be entrusted with the possession of his own title deeds, or that the facilities and inducements to fraud and forgery are so common and irresistible as is implied. A moment’s consideration is sufficient to convince any well informed and unprejudiced mind that the difficulties attending the forging and fabricating of deeds afford a much more effectual protection than a registration would do; and, while our Courts of Law are so eloquently silent on the subject, this evil may safely be permitted to remain in the cradle of its birth—the brains of those who owe their facts to their imaginations, and their arguments to their resolutions. It is singular to find, ‘concealment of rights, and litigation,’ as evils of the present system, placed in such strange propinquity. One would naturally suppose that a system that kept people in the dark with respect to their rights, would tend to prevent litigation of those rights; and that such an exposure as a registration is intended to effect would increase litigation, and not diminish it. Mr. Hazlitt is not of this opinion; whether he is right or wrong on this point my readers will draw their own conclusion. In my opinion, nothing would tend more to promote litigation of titles,

than the establishment of a registration of deeds.”

On the subject of the expense of the present system, Mr. Moore further remarks that—

“If it is objected that the necessity for showing a sixty years title is an evil, let the law which enforces the necessity be repealed. Until that is done, I apprehend it will be just as necessary after this bill has become law, as it is now, to show what transactions an estate has been the subject of—that all encumbrances have been paid off—that you can convey to the purchaser what he has purchased, whether it is one acre or one thousand acres. After a registration is established, will a mortgagee forego an investigation of the mortgagor’s title, and, should the mortgage-money be called in, will the next mortgagee be more disposed to waive this precaution, or to employ the same professional aid as before? ‘But this is not all.’ The oftener a man mortgages the oftener he would incur the expenses of registration, and the less he would have to pay them with. All this cannot be denied; but how does it appear that registration will heal this ulcerous sore? Mr. H. fails to enlighten us on this point, but it is easy to see how this proposed law must increase the present expenses of such transactions, and affect the value of the land of small proprietors.

“Mr. H. observes ‘there is nothing in the nature of landed property which renders it impracticable for ready transfer. Railroad property, mining property, canal property, all manifestly interests in land, have been rendered by acts of parliament the subject of simple registration and of simple transfer. Why not then landed property altogether?’

“The slightest consideration is enough to convince any man that there is—and must be so long as our real property laws exist—an essential and important difference between the two classes of property referred to; a difference, I submit, it would be very unwise and impolitic to remove. It is because railway shares, canal shares, &c., are not of the same nature of property as land, that the latter cannot be as readily transferred as the former. The use made of one description of property varies—and will continue to vary—from the use made of the other; and proprietors are not likely to forego the privilege they now have, of entailing real estates, of jointuring widows, of portioning children, and of pensioning relatives and servants, for any advantages which a General Registration offers them. Of all conceits coming from this quarter, that of insisting that landed property should be subject to the same laws and regulations in its transfer as mere personalty, seems to me the most absurd.”

In regard to the interests of solicitors, which it has been supposed will be injuriously affected by the measure, the writer thus remarks:—

"It may perhaps be supposed that the unanimity which prevails in my own branch of the profession in opposing the measure, has its rise in selfish motives; and those who are most under the influence of those feelings will no doubt be the first to make the institution. It would, however, be difficult indeed for any one to show how solicitors who are employed in this branch of the profession can suffer in a pecuniary point of view, when it is considered, that in addition to the fees they now receive, they will be entitled to fees on making duplicates of the deeds, making searches, preparing, filing, and discharging caveats, &c."

THE NEW STAMP ACT.

POWERS OF ATTORNEY FOR TRANSFER OF STOCK.

To the Editor of the Legal Observer.

THE late alterations in the Stamp Laws have not in any way relieved those persons who are of necessity obliged to use powers of attorney for the transfer of stock. The same stamp of 20s. being payable on a power of attorney to sell out or transfer a sum of 50*l.* as 50,000*l.*

It does occur to me that where the transfer or sale is of so small a sum as 50*l.* or 100*l.*, or so on in proportion, the stamp is somewhat too high, and particularly where the power (as most frequently is the case) passes through professional hands in order to its being properly executed and attested,—when it has to bear an additional charge. It has been thought advisable to fix a stamp of 2s. 6*d.* on every 100*l.* in cases of mortgages, and 10s. on every 100*l.* on conveyances, surely then it is somewhat unfair to tax a person, who is not borrowing but selling his own, with a much larger stamp than is charged to a mortgagor on his mortgaging his estate, or to a purchaser of any estate to a similar amount.

The charge for the power of attorney itself is only 1s. 6*d.*, with which no reasonable person could find fault. It is only the unfair apportionment of the Stamp Laws to such small cases that I would complain of.

E.C.

VALIDITY OF WARRANTS OF ATTORNEY.

To the Editor of the Legal Observer.

SIR,—Your Correspondent "S. S." is mistaken in stating in his letter which appeared in your journal of the 9th instant, p. 279, that in the case of *Acraman and another, assignees, v. Herniman*, the warrant of attorney was executed on the 4th March, 1850, but judgment was not signed till the 11th March, 1851, this is not the fact, the warrant of attorney was executed on the 4th March, 1850, and judgment was signed the 11th March, 1850, just one week after, not a year, as "S. S." states. Execution was issued and the goods seized on the 11th May, 1850, all was done in the same year; the declaration on which the special case was grounded was delivered 29th Oct. 1850, and it stands to reason this could not have been done before the cause of action arose.

If judgment had not been signed within the 21 days, there would have been no ground of defence to the action, as in consequence of the warrant of attorney being filed without an affidavit of its execution, and judgment not being signed within 21 days it would have been void under both the acts referred to, but in this case the defence was that as judgment was signed within 21 days of the execution of the warrant, it was sufficient under sec. 2 of 3 Geo. 4, c. 30, notwithstanding the omission to file the affidavit.

The Court of Queen's decided the contrary way, in favour of the plaintiffs, and gave it as their opinion that the 136 sec. of 12 & 13 Vict. c. 106, repealed the 2nd sec. of 3 Geo. 4, c. 30, (see the report in the *Law Times*, 17th May last), that was the ground for setting aside the warrant of attorney in the above case. I think I have now shown that an affidavit is required to be filed whether judgment is signed within 21 days or not, otherwise, in case of a bankruptcy the warrant will be void.

F. M. B. C.

RECENT DECISIONS IN THE SUPERIOR COURTS. AND SHORT NOTES OF CASES.

Lord Chancellor.

Dew v. Clarke. July 19, 1851.

SIR E. SUGDEN'S ACT.—CONTEMPT OF COURT.—NON-PAYMENT OF MONEYS.—DISCHARGE.

Held, that the Court has not power under the 11 G. 4, & 1 W. 4, c. 36, to make an order for the discharge of a prisoner in custody for contempt for the non-payment of a debt under a decree of the Court, but that in such case the debtor must apply to be discharged under the acts for the Relief of Insolvent Debtors.

THIS was a petition under the 11 G. 4, and

1 W. 4, c. 36, (Sir Edward Sugden's Act,) for the discharge out of custody of the defendant, Thomas Clarke, who it appeared had been committed, in 1847, for non-payment of a sum of 5,000*l.*, in obedience to a decree made therein (1 Myl. & K. 103). The Master of the Rolls had discharged the defendant in respect of his contempt incurred by the non-production and delivery of certain title deeds to the plaintiff, upon the ground of the defendant, Valentine Clarke, having taken them abroad with him, but refused his discharge in respect of this debt. It appeared that the defendant used no force or violence, and had put the plaintiff to considerable expense in the consequence in the

other proceedings to establish the will under which he took the property.

James Parker and Frith, in support; *Morris and Hughes*, contra, on the ground the Court had not jurisdiction under Sir E. Sugden's Act.

The Lord Chancellor, after referring to the facts of the case, said, that the real question was whether he had power to order the defendant's discharge. It seemed that the legislature had purposely excluded from the 11 G. 4, and 1 W. 4, c. 36,¹ cases of debt, or which avoured of debt, and therefore if the defendant wished to be discharged, he must either pay the debt or submit to apply to the Insolvent Debtor's Court. The petition was therefore dismissed.

Rolls Court.

Foley v. Smith. July 11, 19, 21, 1851.

SOLICITOR.—PRINCIPAL AND AGENT.—
TAXATION.—ACCOUNT.

A reference was directed for an account, for the delivery of the bills of costs of solicitors and their taxation as between principal and agent, in accordance with an agreement contained in a letter written by the London solicitors, stating that they would act on the usual footing of agent and principal, although during part of the time the principal was not certificated,—the business relating to the defence of a suit brought against the principal.

This suit was instituted for the delivery of the bills of costs of Messrs. G. & W. C. Smith, of Southampton Buildings, for taxation thereof, and a declaration that they were not entitled to charge fees otherwise than as between solicitor and agent, and for an account as between them and the plaintiff, a solicitor for whom they had transacted the business. It appeared that Mr. W. C. Smith, on 24 Feb. 1845, had written to Mr. Foley, thanking him for employing them in the institution and prosecution of a suit in Chancery which had been filed by a Mr. Clarke, whom the plaintiff had indemnified against any liabilities, on behalf of his daughters, the infants and legatees of a testatrix named Ann Dod, against Mr. Foley as executor, for administration of the estate, and in undertaking his defence, and then proceeding, "we beg for your satisfaction to state that we consider that we act as your agents in this and every other suit, action, or matter, in which we may be

concerned for you, either personally or otherwise, and that our charges in respect of the said suit, and in any other suit, action, or matter, in which we may be so employed by you, will therefore be on the usual footing of agent and principal." Mr. Foley was, during some part of the time, uncertificated. It was also sought that a mortgage which the plaintiff had executed to the defendants for certain moneys lent should stand as a security only for so much of the money as had been actually advanced. The Court having intimated, upon a motion to discharge an order obtained as of course on a petition which had been presented for the delivery and taxation of the bills of costs, that questions might arise in reference to the special agreement, and the plaintiff being advised he could not obtain all the relief he sought on petition, abandoned the order and filed this bill.

Tenant C. Webster, in support; *R. Palmer and W. T. B. Daniel*, contra; *Forbes*, for a sub-mortgage.

The Master of the Rolls directed a reference for an account, and the delivery and taxation of the bills of costs holding the agreement to transact the business on agency terms was valid, and reserved the costs.

Vice-Chancellor Knight Bruce.

In re Atkinson's Trust. July 12, 13, 1851.

INSOLVENT.—PURCHASER FOR VALUABLE CONSIDERATION.—PRIORITY OVER ASSIGNEE.

A purchaser for a valuable consideration of an interest in trust-funds, who had given notice of the assignment to the trustee, was held entitled to priority over the assignee of the *cestui que trust*, who had become insolvent, where the purchaser swore he had no knowledge directly or indirectly of such insolvency, and no notice thereof except the usual advertisement in the London Gazette had been given to the trustee.

The trust-funds in this case had been paid into Court, in 1848, by the surviving executor of the testatrix's will under the 10 & 11 Vict. c. 96, and on the death of the tenant for life in January, 1851, it became distributable amongst the parties entitled, who were the three children of the tenant for life. It appeared that one of them, Alfred Argles, had assigned his share, in 1835, to the petitioner, John Richard Cook, for value and notice thereof was given to the trustees. It now appeared that Mr. Argles had been insolvent in 1830 and in 1834, and the petition was accordingly served on the assignee, but the petitioner in his affidavit swore that at the time of his purchase he did not know and had received no notice either directly or indirectly of such insolvency. It appeared also in the schedule to the affidavit made by the executor on paying the fund into Court, (which stated the several assignments affecting the fund of which he had received notice that the petitioner's assignment was stated with the others, but not the insolvencies.

¹ Which enacts (s. 16) that, "the discharge of any prisoner adjudicated upon under the authority of an act passed in the 7th year of his present Majesty's reign, entitled, 'An Act to Amend and Consolidate the Laws for the Relief of Insolvent Debtors in England,' or any other act which may hereafter be passed for the relief of insolvent debtors, shall and may extend to all process issuing from any Court of Equity for any contempt of such Court for non-payment of money, or of costs, charges, or expenses in any such Court."

Frisk, in support of the petition, referred to *Dearle v. Hall*, 3 Russ., 1; *Etty v. Bridges*, 2 You. & C., Ch., 486; *Sowerby v. Brooks*, 4 B. & Ald. 523; *Hovil v. Browning*, 7 East, 154, 161.

Follett for the assignee, on the ground that the publication in the *London Gazette* was sufficient notice, and that the insolvent's estate and effects were absolutely vested in the assignee; *Goldfinch* for the trustees.

The Vice-Chancellor said, that nothing more passed to the assignee under the insolvency than would pass by the fullest assignment he could have made, and that the notice in the *Gazette* was insufficient to prevail over the purchase for value with notice to the trustee; and that the petitioner was therefore entitled, as against the assignee, to the fund.

Vice-Chancellor Lord Cranworth.

Peascod v. Tully. July 17, 1851.

INFANT DEFENDANTS.—CLAIM.—GUARDIAN AD LITEM, APPOINTMENT OF.

A co-defendant was appointed guardian ad litem to infant defendants to a claim filed under the Orders of April, 1850, without a commission, upon the usual certificate of fitness.

THIS was an application seeking the appointment of a guardian *ad litem* to several infant defendants in this case, which was a claim under the Orders of April, 1850, without a commission upon the usual certificate of fitness. The party proposed as guardian was also a defendant.

The 28th Order provides, that "guardians *ad litem* to defend may be appointed for infants or persons of weak or unsound mind against whom any writ of summons may have issued under these orders, in like manner as guardians *ad litem* to answer and defend are now appointed in a suit on bill filed."

Marett in support.

The Vice-Chancellor granted the application.

Vice-Chancellor Turner.

Hodder v. Sandford. July 21, 1851.

NEW ORDERS.—CLAIM.—SPECIFIC PERFORMANCE.—LEAVE TO FILE.

Leave refused, under the 6th order of April, 1850, to file a claim relating to the specific performance of an agreement which not only involved a question of construction, but also one of disputed fact, and the parties left to file a bill.

THIS was an application under the 6th Order of April, 1850, for leave to file a claim to enforce the specific performance of an agreement.

Goodeve in support.

The Vice-Chancellor said, that as the question raised by the claim was not merely one of construction, but was also one of disputed fact, and there would therefore be a number of affi-

davits raising different issues, which could not be tried in the proceeding by claim, the application must be refused.

Court of Queen's Bench.

Jonas v. Adams. June 19, 1851.

COUNTY COURT.—ADMISSION OF EVIDENCE.—ADDING NEW TERM OF CONTRACT.—NEW TRIAL.—COSTS.

On appeal from a County Court under the 13 & 14 Vict. c. 61, s. 14, evidence was held improperly to have been admitted in an action brought for the breach of a covenant by the defendant, a schoolmaster, for taking pupils within a certain distance of the plaintiff, to show that the plaintiff had executed the deed on an understanding that the defendant would not take pupils at terms under those charged at the school transferred to the plaintiff.

Where a verdict was found by a jury, the Court directed a new trial, and refused to direct judgment to be entered for the defendant, and the new trial being rendered necessary through the mistake of the judge, costs were refused of the first trial.

THIS was an appeal, under the 13 & 14 Vict. c. 61, s. 14, from the decision of the Judge of the Devon County Court, held at Plymouth, on the ground of the improper reception of evidence upon the trial before a jury of this action, which was brought for the breach of a covenant in a deed, whereby the defendant transferred to the plaintiff the goodwill of a school at Stoke Damerel. The covenant provided, that the defendant should not set up a school within a certain distance of the plaintiff, and would use his best endeavours to procure pupils for the plaintiff. Parol evidence was admitted on the trial showing that the plaintiff was desirous of having a covenant in the deed restraining the defendant from taking pupils at his own house at less than a certain amount, and that the defendant, on objecting to the covenant, said he would break of the treaty if the plaintiff would not trust to his honour, and that he intended his terms should be much higher if not double what he then charged at the school, and that the deed was executed upon that understanding. It appeared the defendant had taken pupils at his own house on the same terms as at the school, and the plaintiff obtained a verdict.

Collier in support of the appeal.

Greenwood, Q. C., for the respondent, on the ground the evidence did not add a new term to the deed.

The Court said, the evidence was inadmissible, and as there was a verdict by a jury, there must be a new trial, and the necessity for a new trial being occasioned by the mistake of the judge, refused the costs of the first trial.

Court of Common Pleas.*Steinbank v. Fenning*. May 8, 9, 30, 1851.

MARINE POLICY OF INSURANCE.—INSURABLE INTEREST.—CONSTRUCTIVE TOTAL LOSS.

Under a deed of hypothecation, given by the captain of a ship to secure to G. & Co. advances for repairs, it was provided, that as no premium was charged by way of sea risk, the vessel should be at the risk of the owners, and that if the bills of exchange given for the amount advanced were not paid, G. & Co. might seize and sell the ship wherever she might be, and the plaintiff, who was the agent of G. & Co., insured the vessel, which was wrecked and afterwards abandoned as for a constructive total loss. In an action on the policy of insurance, held, that G. & Co. had no insurable interest in the ship, and a rule was made absolute to enter the verdict for the defendant.

This was a rule nisi granted on April 23 last, upon leave reserved, to enter the verdict for the defendant or a nonsuit in this action, which was brought on a policy of marine insurance. It appeared on the trial at the Liverpool Spring Assizes, before Mr. Baron Platt, that the captain of the ship Hartland, which left Quebec for Bristol on Sept. 20, 1846, with a cargo of timber, but having encountered bad weather and being damaged had returned, borrowed of Messrs. Gilmore & Co. of Quebec and Liverpool the sum of 1,676*l.*, for the repairs, giving bills of exchange for 1,307*l.* on the owners, and 367*l.* on the freight owner, and also hypothecating the ship. Under the hypothecation deed it was provided, that as no premium was charged by way of sea risk, the vessel should be at the risk of the owners, and that if the bills of exchange were not paid, the sum lent and secured should be recoverable from the owners, together with any sum that might be laid out by Messrs. Gilmore & Co. by way of insurance, whether the ship arrived at its destination or not, and they were also empowered, in the event of the bill not being paid, to seize and sell the ship wherever it might be. The plaintiff, as agent for Messrs. Gilmore & Co., insured their interest in the ship which sailed for England, but having struck on a reef had incurred a claim for salvage upon being saved, and on its return to Quebec, notice of abandonment was sent by the plaintiff to the defendant, who acted on behalf of the insurers, that they intended to claim as for a constructive total loss. The plaintiff had obtained a verdict subject to this rule.

Knowles, Q. C., and *Atherton*, showed cause; *Watson, Q. C.*, and *Tomlinson*, in support.

The Court, after taking time to consider, said, that as the master had no authority to pledge the personal credit of the owners, and the deed was not such as the Court of Admiralty would enforce, no interest had been

conveyed to Messrs. Gilmore & Co., and that therefore they had no insurable interest, and the rule must be absolute to enter the verdict for the defendant.

Court of Exchequer.*Bland v. Crowley and others*. May 2, 12, 1851.

COVENANT.—LANDOWNER AND PROVISIONAL DIRECTORS OF RAILWAY.—CONDITION PRECEDENT.

*The provisional directors of a railway company agreed with a landowner, through whose ground it was proposed the line should run, to pay him a certain sum per acre for the land taken and for severance, and also the sum of 3,000*l.* for the diminished privacy of the park, in the event of the bill passing. The covenant was entered into, to induce the plaintiff to withdraw his opposition to the bill. The bill passed, but the defendants did not take any land; Held, nevertheless, that the plaintiff was entitled to recover the 3,000*l.**

This was an action to recover the sum of 3,000*l.* from the defendants, who were provisional directors of the Portsmouth and Epsom Railway, upon their covenant to pay to the plaintiff, the owner of a park and grounds at Leatherhead, and through which the defendants' line was proposed to run, the sum of 120*l.* per acre for the land taken and for severance, and also a sum of 3,000*l.* for the diminished privacy of the park in the event of the bill passing. The object of the defendants was to induce the plaintiff to withdraw his opposition. The bill passed, but the company did not take the plaintiff's land. The defendants having pleaded, that they had not taken the land, the plaintiff demurred.

Peacock, in support of the demurrer; *Bramwell*, contra.

Cur. ad. vult.

The Court (per *Parke* and *Platt*, BB., dissentiente *Pollock*, L. C. B.) held, that the taking of the land was not a condition precedent to the payment of the 3,000*l.*, as the only event specified on which the payment was to be contingent was the passing of the bill, and that therefore the plaintiff was entitled to judgment.

Court of Exchequer Chamber.*Regina v. Hogan*. June 20, 1851.

ABANDONMENT OF CHILD.—WHERE ILLEGITIMATE.—INDICTMENT FOR.

Held, that the 4th section of the 5 Geo. 4, c. 83, does not apply to a woman abandoning her illegitimate child, and in the absence of evidence to show and an allegation in the indictment that she was able to maintain such child, and the conviction was quashed, and the prisoner's recognizance ordered to be discharged where there was no such allegation.

THIS was an indictment against one Mary Hogan, for abandoning her child with intent to defraud the parish and the overseers of the poor. Upon the trial before Mr. Justice Wightman, she was found guilty, subject to a point reserved, whether the 5 Geo. 4, c. 93, applied to illegitimate children, but had been discharged on her own recognizance. By s. 4 of the 5 Geo. 4, c. 93, it is enacted, that "every person running away and leaving his wife, or his or her child or children, chargeable, or whereby she or they or any of them shall become chargeable to any parish, township or place" "shall be deemed a rogue and vagabond, within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession

of such offender or by the evidence of each of one or more credible witnesses) to the House of Correction, there to be kept to hard labour for any time not exceeding three calendar months."

Phineas supported the indictment.

The Court (per Pollock, L. C. B., Parker, B., Patteson and Wightman, JJ., and Marks, B.) said, that it was, doubtless, an offence to neglect a child where there was a duty to take care of it, but there was no averment in the indictment in the present case, that the mother had the means of maintaining the child or that any injury occurred to the child in consequence of the abandonment, and the indictment could not therefore be sustained, and the recognizances must be discharged.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF PROPERTY AND CONVEYANCING.

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lunacy, p. 147.

Courts of Equity :

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, pp. 204, 246, 265.

Law relating to Trustees, p. 285.

Evidence, pp. 306, 326.

Jurisdiction in Suits for Discovery, p. 347.]

ABSTRACT, DELAY IN COMPLETING.

Payment of interest on purchase money.—Upon a sale under the Court, on the 14th September, there was a condition that the purchaser should confirm the report, and before the 10th of November pay his purchase money and interest from the 29th of Sept., and be entitled to the rents from that time; and "under no circumstances" was he to be excused paying interest from that time. The purchaser was unable to obtain and serve the order of confirmation until the 29th of November. The abstract was delivered on the 6th of December, and the requisitions finally answered on the 17th of January: *Held*, that there was no such delay on the part of the vendor as to relieve the purchaser from payment of interest. *Rowley v. Adams*, 12 Beav. 476.

See *Interest on Purchase Money*, 2.

BOUNDARY.

See *Uncertainty*.

CESTUI QUE TRUST.

See *Mortgage*.

COMPENSATION.

See *Indemnity; Lessor's Title; Sale under Order of Court*.

CONDITIONS OF SALE.

See *Interest on Purchase Money*, 1.

CONTRACT.

1. *Performance in substance and not in spirit.*—Consideration of the principle on which the Court may, in certain cases, interpose to prevent a contract from being performed in specie,—protecting the legal or supposed legal rights of the party seeking such assistance, and preserving to the other party the substantial benefit of the specific performance. *This Lancashire Railway Company v. Hattersley*, 8 Har. 72.

2. *Qualified acceptance of offer.*—*Mutuality.*—On a treaty for an under-lease, a memorandum of the terms of the intended agreement was prepared, stipulating that the lease should contain all usual covenants, and also the covenants in the leases of the ground landlord, and the proposed lessee signed the memorandum, accompanying his signature by the qualification that he agreed thereto, subject to there being nothing unusual in the leases to the ground landlord. A draft of the proposed lease was afterwards submitted by the lessor's solicitor to the proposed lessee, who made some alterations and returned the draft, with a request that the lessor would at once grant the lease as altered, or refuse it. The lessor's solicitor sent the draft back the same day, assenting to all the alterations except one, whereby the proposed lessee had expunged a clause in the draft restraining any assignment or demise by him without the consent of the lessor: *Held*, that, upon the return of the draft lease, not according to all the alterations, and in the absence of any proof, that the lessor was previously bound by the terms as to unusual covenants, introduced by the proposed lessee on his signing the memorandum, the contract was incom-

plate, and the proposed lease was at liberty to determine the treaty.

Whether the principle would apply in a case where there was no real or substantial distinction between the terms of an offer by one party, and of a qualified acceptance or adoption of such offer by the other, *quære*. *Lucas v. James*, 7 Harp. 410.

Cited in the judgment: *Holland v. Eyre*, 2 S. & S. 194.

CONSTRUCTION OF DEEDS.

General release.—The husband and administrator of a party who had been entitled for life to the income arising from a share of a testator's residuary estate, and who was himself interested in part of the residue, executed for valuable consideration, to a party who had become entitled to a portion of the principal, an assignment of all his interest in the testator's estate, mentioning outstanding debts in India generally. And the deed contained mutual general releases. Both of the parties knew that part of the trust property was outstanding, but it was afterwards discovered that a sum was due from the executor in respect of assets which he had misapplied to his own use, and of which neither of the parties to the deed had any knowledge at the time of its execution. The administrator claimed the arrears of interest which accrued due thereon in the lifetime of the party entitled for life: *Held*, that, as the general words of the assignment were sufficient to pass all the interest of the administrator in the arrears, his claim could not be sustained. *Hembsie v. Jackson*, 2 H. & T. 301; 2 M'N. & G. 373.

Case cited in the judgment: *Beaumont v. Bramley*, 7 T. & R. 52.

COVENANT AGAINST ASSIGNMENT.

Licence.—The vendor's bill, in a suit for specific performance of an agreement to take an assignment of a lease, stated a covenant in the lease not to assign without the licence of the lessor, but did not aver that the plaintiff had or could obtain such a licence: *Held*, upon demurrer, that the Court, at the hearing of the cause, upon such facts, would not dismiss the bill, but would refer it to the Master to inquire whether the vendor could make a good title; and that the demurrer must therefore be overruled. *Smith v. Capron*, 7 Harp. 185.

COVENANT PROHIBITING BUILDING.

A vendor of freehold property, who, on his own purchase of it, had entered into a covenant to observe the covenants entered into with a former vendor, and which prohibited building on the land put it up for sale, pursuant to particulars and conditions, noticing the existence of the covenant, but not stipulating that the purchaser should enter into any covenant on the subject. On a bill for specific performance, filed by the purchaser, *held*, that the plaintiff was not entitled to a decree, unless on the terms of

giving or providing for the vendor a sufficient indemnity against any breach of the covenant on the part of the plaintiff, his heirs, appointees or assigns: *Held*, also, that a covenant on the part of the plaintiff, his heirs, executors, administrators, appointees and assigns, with the defendant, his heirs, executors and administrators, to the same effect, *mutatis mutandis*, as the covenant entered into by the vendor, on his own purchase, ought to be considered a sufficient indemnity. *Mosley v. Loderwick*, 1 De G. & S. 708.

See *Lucas*.

DELAY OF PURCHASER.

Want of means to complete.—Under two agreements for sale, (one of which was to be completed on the 1st of June, and the other on the 29th of Sept., both in 1846,) disputes arose upon the title, and upon certain valuations incident to the purchase. The conveyances were engrossed on the 4th January, 1847, and the vendor made two requisitions to the purchaser to complete the 1st on the 11th January, and the second on the 25th of Jan. 1847, and intimated that non-compliance with the requisitions would be treated by the vendor as a breach of the agreements. The purchaser did not comply; but his solicitor reiterated claims to certain deductions and abatements. The disputes continued until after the 13th of Feb. 1847, when the purchaser filed a bill seeking specific performance.

Held, that the circumstances and delay did not constitute a case of such default by the plaintiff as to preclude him from a title to specific performance; but, it appearing on the correspondence that the claim of deduction and abatements had not been the cause which delayed the completion of the purchase, but that want of means on the part of the purchaser to pay even so much purchase money as, according to his view, he had to pay, was the cause of delay up to and until after the date of the filing of the bill, the Court *held*, that the purchaser had so acted as to have lost the right to enforce a specific performance, and dismissed his bill. But the Court declined giving the defendant costs, except upon the terms of his returning the deposit. *Gee v. Pearce*, 2 De G. & S. 325.

DELAY IN COMPLETING ABSTRACT.

See *Abstract*.—*Interest*.

IDENTIFICATION OF PROPERTY.

A. B. became the purchaser of a mansion house and park under conditions of sale, which stated that the whole property was freehold except eight acres which were copyhold, but undistinguished except as not including any of the buildings. The abstract of title having been delivered and discussions thereon having taken place which raised difficulties in the way of completing the purchase, a supplemental agreement was entered into, detailing what requisitions as to title, &c. should be complied with. Among these requisitions was one in the following words:—"Declaration of identity

of lands mentioned in deeds to those now sold." *Held*, on a bill filed by the vendor for specific performance, that the supplemental agreement was a substitution for the original contract, and that *A. B.* was not entitled to demand that the vendor should distinguish the freehold from the copyhold parts of the premises, so as to show that the latter did not include any of the buildings. *Dawson v. Brinckman*, 3 M'N. & G. 53.

INCOME TAX.

A purchaser, paying his purchase money, with interest, into Court, is not to deduct the income tax payable on the interest. *Humble v. Humble*, 12 Beav. 43.

INDEMNITY.

Deterioration between sale and completion.—Implied contract.—A purchaser from the Court is in equity the owner from the order confirming the report, and any deterioration of the property arising from accident or by fire, without the default of the vendor, falls upon the purchaser.

If, between the contract and the conveyance, a loss arises by accident, which brings with it legal obligation, which must be immediately satisfied, the expense incurred by the vendors is payable by the purchaser.

After the confirmation of the report, a part of the premises fell down and damaged the neighbouring property, the owner of which threatened to bring an action, and the remainder was ruinous and dangerous to the public. The vendor having reinstated and repaired the premises, the Court *held*, that the purchaser was bound to indemnify him, and on petition, ordered a reference to ascertain the expenses properly incurred. *Robertson v. Skelton*, 12 Beav. 260.

INTEREST ON PURCHASE MONEY.

1. *Condition of Sale.*—By conditions of sale, interest was payable from November 1846, if "from any cause whatever," the purchase should not be then completed. The vendors did not make out their title until March, 1849: *Held*, that interest was payable only from the last-mentioned period. *Robertson v. Skelton*, 12 Beav. 363.

Case cited in the judgment: *De Visse v. De Visse*, 1 H. & T. 408, 1 M'N. & G. 336.

2. *Delay in delivering abstract.*—The case of *De Visse v. De Visse*, 1 M'N. & G. 336; 1 H. & T. 408, must be acted on with some caution, and it is not in every case of delay in the delivering of a sufficient abstract, that a vendor is to lose the interest which he has stipulated for. *Rowley v. Adams*, 12 Beav. 476.

LEASE.

Liability of depositors to perform covenant.—A lessee of a factory deposited the lease by way of equitable mortgage, and upon the landlord's distraining for rent in arrear, the depositors of the lease paid the rent in arrear to the land-

lords, entered into possession of the factory, sold some of the machinery, including some fixed to the freehold, and otherwise acted as owners of the lease, and were accepted by the landlords as such owners: *Held*, on demurrer, that the landlord had no equity to compel them to take a legal assignment of the lease. *Moore v. Greg*, 2 De G. & S. 304.

See *Renewal of Lease.—Covenant.*

LESSOR'S TITLE.

Compensation for mis-statement.—Messuages described in a particular of sale as held for the residue of a term of 99 years from the 24th of June, 1838, but not as being held by an original lease, were sold subject to conditions that the purchaser should not be entitled to call for the lessor's title, and that any error or mis-statement of the term of years should not vitiate the sale, but should be the subject of compensation, under a provision for arbitration authorizing the arbitrator of either party to proceed in certain events *ex parte*. The title proved to be an under-lease, for a term less by three days than the term of 99 years granted by the original lease. The vendor filed a bill to enforce specific performance, with compensation to an amount which had been assessed, in conformity with the conditions, by one arbitrator nominated by the vendor, the purchaser having taken no part in the arbitration. The Court dismissed the bill with costs. *Madeley v. Booth*, 2 De G. & S. 718.

Case cited: *Warren v. Richardson*, 1 Y. & C. Exch. 1.

MERGER.

Title.—Mortgagor.—*P.* being lessee of two houses, underlet one to *S.*, and covenanted to indemnify her against the rent reserved by the original lease. *S.* bequeathed that house (which was numbered four) to *P.*, in trust for *L.*, and appointed *P.* her executor. *P.*, as the executor and trustee of *S.*'s will, executed a deed, which purported to be an assignment by him to *L.*, of number four, for the residue of the term granted to *S.* After that, *P.* bequeathed the two houses to his executors, upon certain trusts. After his death, his executors and trustees demised the house number four to *L.*, for the then remainder of the term granted to *S.*: *Held*, that *L.* could not make a good title to that house, because the legal estate was merged by the bequest made by *S.* to *P.*, the immediate reversioner, and, therefore, the assignment executed by *P.* was inoperative; and because the demise in use by the executors and trustees of his will, was a breach of trust. *Law v. Urwin*, 16 Sim. 377.

[To be concluded in our next Number.]

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SATURDAY, SEPTEMBER 13, 1851.

CHANCERY REFORM.

PROPOSED JUDICIAL AND OFFICIAL ALTERATIONS.

MANY of our readers who are interested in the progress and results of Chancery Reform will have perused the evidence given before the Select Committee of the House of Lords in the last session of Parliament, on Lord Brougham's Bill for giving "Primary Jurisdiction to the Masters in Chancery" in administration and other suits. Several of the judges, barristers, solicitors, and officers of the Court were examined, and their statements and opinions are well deserving of attentive consideration.

The principal matters under discussion affect both the judicial and administrative functions of the Court, relating not only to the decision of the innumerable questions arising on equitable principles and the right construction of various formal and informal instruments, but to the duties of the official staff of the Court, and particularly in the department of the Masters in Chancery and the course of proceeding before them. The mode of taking evidence,—whether oral or written,—whether before the judge who has to decide the cause or before commissioners or examiners,—has been also largely mooted. Indeed, the most comprehensive changes which heretofore would have been considered "*radical reforms*," and have been scouted as impracticable and visionary, are now coolly debated and entertained, with an evident intention of bringing them urgently before Parliament, and with a very sanguine expectation of prompt success.

Amidst all the bitter vituperation against the dilatoriness and enormous expense of the Court of Chancery, there is no complaint of the soundness of our theory of Equitable Jurisprudence. The general

principles of Equity are known and approved. It is to the *expensive machinery* of the Court and its offices that objection is taken. Doubtless there is much ingenuity and excellence in a system devised and invented, as it has been, for the purpose of discovering complicated and subtle frauds—of probing the conscience, of inspecting the secret papers, and by various means detecting the subterfuges of the fraudulent trustee, partner, agent, or executor; but whilst the various forms and modes of "putting to the question" the real culprit, may be useful and necessary in certain special cases, it was absurd and mischievous to apply the same cumbrous machinery to the simplest cases. This evil was partially removed by the *claim orders* of April, 1850; but unfortunately those orders are only available where the evidence can be voluntarily obtained. There are no means of compelling the attendance of unwilling witnesses to make affidavits, nor of enforcing the admission of documentary evidence.

It is now, amongst other things, proposed that the *constitution of the Court* itself shall undergo very material alteration, the main points of which are:—

That the Judges, or some of them, shall be authorised to sit at Chambers like the Common Law Judges, and dispose of certain matters to be defined, and which do not require the delay of a hearing in open Court, accompanied by the expense of briefs and fees of counsel.

Next, that in a large class of cases references to the Masters be altogether dispensed with, and thus the time and expense will be saved of investigations before them, followed by Reports requiring the cause to be again set down and heard—where, in truth, the Order or Decree is for the most part (the facts being established) *granted as a matter of course*. Indeed, it is supposed

that the Judges, with the aid of the Registrars, will thus be able, as it were, to work out a large number of their own decrees.

In order, however, to carry these important propositions into effect, it is evident that additional Judges must be appointed, so that whilst all the Courts are sitting upon causes which require public discussion and judicial decision, the other Judges may be engaged at Chambers in disposing of business of a practical and routine character.

Probably some hesitation may be felt by economical Members of Parliament to the appointment of additional Judges,—especially after having recently filled up the vacancy of the third Vice-Chancellor, and created two new Appeal Judges,—but it should be recollected that there are 15 Judges of the Superior Courts of Common Law, besides the 60 County Court Judges; and it must be admitted that the amount of property in litigation in the Court of Chancery, or under its control and superintendence, far exceeds the value of all the matters in issue in the Common Law Courts. Moreover, there appears to be good reason for expecting that if the procedure in equity could be expedited and cheapened to the satisfaction of the public, the number of suits and matters would be increased several fold. Nor should it be forgotten that the due administration of justice is one of the primary duties of the state, and it ought to follow that no expense should be spared fully to secure it.

In case the suggestions with reference to the Judges should be adopted, the duties of the *Masters* will be much diminished, and it is anticipated that they will then be enabled to conduct the remaining business in their offices with facility and despatch. Relieved, so to speak, of most of their *judicial* avocations, they may effectually terminate all grounds of complaint in regard to the *administrative* business of the Court, to which it is, in fact, their proper province to attend.

It is an important question whether, if the number of judges be increased for the purpose of enabling them to sit at Chambers in the manner suggested, it will be expedient to give any *primary jurisdiction* to the Masters. It must be recollected that the decrees and orders of a judge will always be more satisfactory to the suitor than the report or decision of an inferior tribunal. If arrangements can be made by which the Judges can despatch the business proposed to be delegated to them "out of Court,"

at no increased amount of time or expence, it will be far preferable to leave it in their hands, aided by the Masters and their clerks in such cases as require minute investigation.

In whatever way these primary arrangements may be settled, it is evident that an increased number of *efficient clerks* is absolutely necessary in the Masters' offices. The powers conferred by Sir George Turner's Act, (13 & 14 Vict. c. 35), in regard to the accounts of executors and administrators and the proceedings under the Claim Orders of April, 1850, with the business under the Joint-Stock Companies' Winding-up Acts, have largely increased the duties of the Masters and their clerks, and it seems impossible to discharge all those duties efficiently without an additional clerk in each office. Whether such clerk should be subordinate or equal to the present chief clerks, is a question which can only be settled when the duties of each are clearly defined.

It will not, perhaps, be expedient in any great degree, to elevate the position of the chief clerk, lest dignified persons be placed in their situation, who will delegate the main burden to the second clerk, and assume the position of a Master. Both clerks should be "working men," and the better arrangement, we think, would be, to assign to the new clerk the taking of accounts, for which purpose, we trust, a sufficient number of solicitors would be found of competent skill in that department. The chief or senior clerk might take cases of pedigree, and others, in which it is necessary to investigate evidence, and to prepare special reports for the Master.

Some of the suggestions under consideration go much further than we think can be reasonably maintained. The intolerable grievance of the present delays in the Master's Offices, has induced a few reformers to recommend that the Masters should be altogether superseded and another class of officers substituted to work out the details of administration and other suits. But this alteration would be a mere change of name. There must be a sufficient number of officers to conduct the numerous inquiries which cannot be investigated in open Court or before a judge at chambers.

Even at Common Law, besides the taxation of costs, many references are made to the Masters, wherein they receive and investigate evidence and report the result to the Court. And so in many cases at *Nisi Prius*, involving numerous details and mi-

nute points, the examination of which requires long-continued attention, it is impracticable satisfactorily to conduct the inquiry before a jury, and in such cases arbitrators are appointed.

Now, in Chancery, there are still more numerous matters to be considered. If each item were subjected to the discussion of counsel and the decision of the Court, many cases would occupy a month, and some much longer, to the intolerable delay of all other business. The principle of the *division of labour* must be applied in order to secure full justice. There must therefore be a class of officers resembling the Masters and their chief clerks, competent not only to examine into and report on ordinary cases in which the time of the Court would be unnecessarily occupied, but also to conduct difficult and complicated inquiries with a view to the ultimate decision of the Court.

In our next paper we shall consider the proposed alterations in taking evidence, and at an early opportunity advert to the suggested improvements in the mode of remunerating solicitors. The latter subject in particular was much inquired into by the Select Committee of the House of Lords; and on the former the Chancery Commissioners have already issued a series of questions and taken the examination of several witnesses.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

ADMINISTRATION OF CRIMINAL JUSTICE IMPROVEMENT.

14 & 15 VICT. c. 100.

The Court may amend certain variances not material to the merits of the case, and by which the defendant cannot be prejudiced in his defence, and may either proceed with or postpone the trial to be had before the same or another jury; s. 1.

Verdicts and judgments valid after amendments; s. 2.

Records to be drawn up in amended form, without noticing the amendments; s. 3.

The means by which the injury was inflicted need not be specified in indictments for murder and manslaughter; s. 4.

Forms of indictment in cases of forgery and uttering, stealing, and embezzling, or obtaining by false pretences; s. 5. In engraving plates, &c.; s. 6. In other cases; s. 7.

Intent to defraud particular persons need

not be alleged or proved in cases of forgery, uttering, or false pretences; s. 8.

A party indicted for felony or misdemeanor may be found guilty of an attempt to commit the same, and shall be liable to the same consequences as if charged with and convicted of the attempt only. No person so tried to be afterwards prosecuted for the same; s. 9.

Repeal of the 11th sect. of 7 W. 4, & 1 Vict. c. 85; s. 10, as to felony and assault.

On the trial of an indictment for robbery the jury may convict of an assault with intent to rob. No person so tried to be afterwards prosecuted for the same; s. 11.

Person tried for misdemeanor not to be acquitted if the offence turn out to be felony, unless the Court so direct; s. 12.

Person indicted for embezzlement as a clerk, &c, not to be acquitted if the offence turn out to be larceny, and *vice versa*; s. 13.

Upon an indictment for jointly receiving, persons guilty of separately receiving may be convicted; s. 14.

Separate accessories and receivers may be included in the same indictment in the absence of the principal felon; s. 15.

Three larcenies from the same person within six months may be included in the same indictment; s. 16.

Where a single taking is charged, the prosecutor not required to elect, unless it appear that there were more than three takings, or more than six months between the first and last taking; s. 17.

Coin and bank notes may be described simply as money; s. 18.

Certain provisions of 23 G. 2, c. 11, & 31 G. 3, (1.) extended. Any Court, judge, justice, &c., may direct a person guilty of perjury in any evidence, &c., to be prosecuted, and commit the party, unless he enter into recognizance to appear and take his trial, and bind persons to give evidence; and give certificate of prosecution being directed, which shall be sufficient evidence of the same; 19.

Extending the 23 G. 2, c. 11, s. 1, to other offences, and simplifying indictments for perjury and other like offences; s. 20.

Extending the 23 G. 2, c. 11, s. 2, as to form of indictments for subornation of perjury and other like offences; s. 21.

On trials for perjury and subornation a certificate of the trial of the indictment on which the perjury was committed sufficient evidence of such trial; s. 22.

Venue in the margin sufficient, except where local description is necessary; s. 23

What defects shall not vitiate an indictment; s. 24.

Formal objections to indictments shall be taken before jury are sworn. Court may amend any formal defect; s. 25.

Repealing part of 60 G. 3. & 1 G. 4, c. 4, as to the traverse of indictments in cases of misdemeanor; s. 26.

Provision as to traversing indictments; s. 27.

Provision as to plea of autrefois convict or autrefois acquit; s. 28.

Punishment for certain indictable misdemeanors; s. 29.

Interpretation of terms; s. 30.

Commencement of act; s. 31.

Not to extend to Scotland; s. 32.

The clauses of the act are as follow:—

An Act for further improving the Administration of Criminal Justice.

[7th August, 1851.]

Whereas offenders frequently escape conviction on their trials by reason of the technical strictness of criminal proceedings in matters not material to the merits of the case: And whereas such technical strictness may safely be relaxed in many instances, so as to ensure the punishment of the guilty, without depriving the accused of any just means of defence: And whereas a failure of justice often takes place on the trial of persons charged with felony and misdemeanor by reason of variances between the statement in the indictment on which the trial is had and the proof of names, dates, matters, and circumstances therein mentioned, not material to the merits of the case, and by the mis-statement whereof the person on trial cannot have been prejudiced in his defence: Be it therefore enacted, that,

1. From and after the coming of this act into operation, whenever on the trial of any indictment for any felony or misdemeanor there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof, in the name of any county, riding, division, city, borough, town corporate, parish, township, or place mentioned or described in any such indictment, or in the name or description of any person or persons, or body politic or corporate, therein stated or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein, or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged or intended to be injured or damaged by the commission of such offence, or in the christian name or surname, or both christian name and surname, or other description whatsoever, of any person or persons whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein, it shall and may

be lawful for the Court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended, according to the proof, by some officer of the Court or other person, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial to be had before the same or another jury, as such Court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects, and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had occurred; and in case such trial shall be had at Nisi Prius the order for the amendment shall be endorsed on the *postea*, and returned together with the record, and thereupon such papers, rolls, or other records of the Court from which such record issued as it may be necessary to amend shall be amended accordingly by the proper officer, and in all other cases the order for the amendment shall either be endorsed on the indictment or shall be engrossed on parchment, and filed, together with the indictment, among the records of the Court: Provided that in all such cases where the trial shall be so postponed as aforesaid it shall be lawful for such Court to respite the recognizances of the prosecutor and witnesses, and of the defendant, and his surety or sureties, if any, accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence respectively, and the defendant shall be bound to attend to be tried, at the time and place to which such trial shall be postponed, without entering into any fresh recognizances for that purpose, in such and the same manner as if they were originally bound by their recognizances to appear and prosecute or give evidence at the time and place to which such trial shall have been so postponed: Provided also, that where any such trial shall be to be had before another jury the Crown and the defendant shall respectively be entitled to the same challenges as they were respectively entitled to before the first jury was sworn.

2. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this act shall be of the same force and effect in all respects as if the indictment had originally been in the same form in which it was after such amendment was made.

3. If it shall become necessary at any time for any purpose whatsoever to draw up a formal record in any case where any amendment shall have been made under the provisions of this act, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.

4. In any indictment for murder or manslaughter preferred after the coming of this act into operation it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient in every indictment for murder to charge that the defendant did feloniously, wilfully, and of his malice aforethought kill and murder the deceased, and it shall be sufficient in every indictment for manslaughter to charge that the defendant did feloniously kill and slay the deceased.

5. In any indictment for forging, uttering, stealing, embezzling, destroying, or concealing, or for obtaining by false pretences, any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile thereof, or otherwise describing the same or the value thereof.

6. In any indictment for engraving or making the whole or any part of any instrument, matter, or thing whatsoever, or for using or having the unlawful possession of any plate or other material upon which the whole or any part of any instrument, matter, or thing whatsoever shall have been engraved or made, or for having the unlawful possession of any paper upon which the whole or any part of any instrument, matter, or thing whatsoever shall have been made or printed, it shall be sufficient to describe such instrument, matter, or thing by any name or designation by which the same may be usually known, without setting out any copy or fac-simile of the whole or any part of such instrument, matter, or thing.

7. In all other cases wherever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile of the whole or any part thereof.

8. From and after the coming of this act into operation it shall be sufficient in any indictment for forging, uttering, offering, disposing of, or putting off any instrument whatsoever, or for obtaining or attempting to obtain any property by false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person; and on the trial of any of the offences in this section mentioned it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud.

9. And whereas offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offences, and not with the actual commission thereof: for remedy thereof be it enacted, That if on the trial of any person charged with

any felony or misdemeanor it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the said indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried.

10. And whereas it is enacted by a certain act of parliament passed in the 1 Vict. c. 85, intituled, "An Act to amend the Laws relating to Offences against the Person," that "on the trial of any person for any of the offences therein-before mentioned, or for any felony whatever where the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding:" And whereas great difficulties have arisen in the construction of such enactment: For remedy thereof be it enacted, That the said enactment shall be and the same is hereby repealed.

11. If upon the trial of any person upon any indictment for robbery it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob; and no person so tried as is herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

12. If upon the trial of any person for any misdemeanor it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the Court before which such trial may be had shall think fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.

13. If upon the trial of any person indicted for embezzlement as a clerk, servant, or person

employed for the purpose or in the capacity of a clerk or servant, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, but is guilty of simple larceny, or of larceny as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if upon the trial of any person indicted for larceny it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement; and no person so tried for embezzlement or larceny as aforesaid shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts.

14. If upon the trial of two or more persons indicted for jointly receiving any property it shall be proved that one or more of such persons separately received any part of such property, it shall be lawful for the jury to convict upon such indictment such of the said persons as shall be proved to have received any part of such property.

15. And whereas it frequently happens that the principal in a felony is not in custody or amenable to justice, although several accessories to such felony or receivers at different times of stolen property the subject of such felony may be in custody or amenable to justice; For the prevention of several trials be it enacted, That any number of such accessories or receivers may be charged with substantive felonies in the same indictment, notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice.

16. It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within the space of six calendar months from the first to the last of such acts, and to proceed thereon for all or any of them.

17. If upon the trial of any indictment for larceny it shall appear that the property alleged in such indictment to have been stolen at one time was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than the space of six calendar months elapsed between the first and the last of such takings; and in either

of such last-mentioned cases the prosecutor shall be required to elect to proceed for such number of takings, not exceeding three, as appear to have taken place within the period of six calendar months from the first to the last of such takings.

18. In every indictment in which it shall be necessary to make any averment as to any money or any note of the Bank of England or any other bank it shall be sufficient to describe such money or bank note simply as money, without specifying any particular coin or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, although the particular species of coin of which such amount was composed, or the particular nature of the bank note, shall not be proved, and in cases of embezzlement and obtaining money or bank notes by false pretences, by proof that the offender embezzled or obtained any piece of coin or any bank note, or any portion of the value thereof, although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part shall have been returned accordingly.

19. Whereas by an act of parliament passed in England in the 23 Geo. 2, c. 11, intitled "An Act to render Prosecutions for Perjury and Subornation of Perjury more easy and effectual," and by a certain other act of parliament made in Ireland in the 31 G. 3, intitled "An Act to render Prosecutions for Perjury and Subornation of Perjury more easy and effectual, and for affirming the Jurisdiction of the Quarter Sessions in Cases of Perjury," certain provisions were made to prevent persons guilty of perjury and subornation of perjury from escaping punishment by reason of the difficulties attending such prosecutions: And whereas it is expedient to amend and extend the same: Be it enacted, That it shall and may be lawful for the judges or judge of any of the Superior Courts of Common Law or Equity, or for any of her Majesty's justices or Commissioners of assize, nisi prius, oyer and terminer, or gaol delivery, or for any justices of the peace, recorder or deputy recorder, chairman, or other judge, holding any General or Quarter Sessions of the Peace, or for any Commissioner of Bankruptcy or Insolvency, or for any judge or deputy judge of any County Court or any Court of Record, or for any justices of the peace in Special or Petty Sessions, or for any sheriff or his lawful deputy before whom any writ of inquiry or writ of trial from any of the Superior Courts shall be executed, in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, deposition, examination, answer, or other proceeding made or taken before him or them, to direct such person to be prosecuted for such perjury, in case there shall appear to him or them a reasonable cause for such

prosecution, and to commit such person so directed to be prosecuted until the next session of oyer and terminer or gaol delivery for the county or other district within which such perjury was committed, unless such person shall enter into a recognizance, with one or more sufficient surety or sureties, conditioned for the appearance of such person at such next session of oyer and terminer or gaol delivery, and that he will then surrender and take his trial, and not depart the Court without leave, and to require any person he or they may think fit to enter into a recognizance, conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid, and to give to the party so bound to prosecute a certificate of the same being directed, which certificate shall be given without any fee or charge, and shall be deemed sufficient proof of such prosecution having been directed as aforesaid; and upon the production thereof the costs of such prosecution shall and are hereby required to be allowed by the Court before which any person shall be prosecuted or tried in pursuance of such direction as aforesaid, unless such last mentioned Court shall specially otherwise direct; and when allowed by any such Court in Ireland such sum as shall be so allowed shall be ordered by the said Court to be paid to the prosecutor by the treasurer of the county in which such offence shall be alleged to have been committed, and the same shall be presented for, raised, and levied in the same manner as the expenses of prosecutions for felonies are now presented for, raised, and levied in Ireland: Provided always, that no such direction or certificate shall be given in evidence upon any trial to be had against any person upon a prosecution so directed as aforesaid.

20. In every indictment for perjury, or for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, signing, or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what Court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, was taken, made, signed, or subscribed without setting forth the bill, answer, information, indictment, declaration, or any part of any proceeding either in Law or in Equity, and without setting forth the commission or authority of the Court or person before whom such offence was committed.

21. In every indictment for subornation of perjury, or for corrupt hargaining or contracting with any person to commit wilful and corrupt perjury, or for inciting, causing, or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly to take, make, sign, or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient, wherever such

perjury or other offence aforesaid shall have been actually committed, to allege the offence of the person who actually committed such perjury or other offence in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, wilfully, and corruptly did cause and procure the said person the said offence, in manner and form aforesaid, to do and commit; and wherever such perjury or other offence aforesaid shall not have been actually committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

22. A certificate containing the substance and effect only (omitting the formal part) of the indictment and trial for any felony or misdemeanor, purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court where such indictment was tried, or by the deputy of such clerk or other officer, (for which certificate a fee of 6s. 8d. and no more shall be demanded or taken,) shall upon the trial of any indictment for perjury or subornation of perjury be sufficient evidence of the trial of such indictment for felony or misdemeanor, without proof of the signature or official character of the person appearing to have signed the same.

23. It shall not be necessary to state any venue in the body of any indictment, but the county, city, or other jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such indictment; provided that in cases where local description is or hereafter shall be required, such local description shall be given in the body of the indictment; and provided also, that where an indictment for an offence committed in the county of any city or town corporate shall be preferred at the assizes of the adjoining county, such county of the city or town shall be deemed the venue, and may either be stated in the margin of the indictment, with or without the name of the county in which the offender is to be tried, or be stated in the body of the indictment by way of venue.

24. No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," or of the words "against the peace" nor for the insertion of the words "against the form of the statute" instead of "against the form of the statutes," or *vice versa*, nor for that any person mentioned in the indictment is designated by a name of office, or other descriptive appellation, instead of his proper name, nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible

day, or on a day that never happened, nor for want of a proper or perfect venue, nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in any case where the value or price, or the amount of damage, injury, or spoil, is not of the essence of the offence.

25. Every objection to any indictment for any formal defect apparent on the face thereof shall be taken, by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every Court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the Court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

26. So much of a certain act of parliament passed in the 60 Geo. 3, & 1 G. 4, c. 4, intitled "An Act to prevent Delay in the Administration of Justice in cases of Misdemeanor, as provides that "where any person shall be prosecuted for any misdemeanor by indictment at any session of the peace, session of oyer and terminer, great session, or session of gaol delivery, within that part of Great Britain called England, or in Ireland, having been committed to custody or held to bail to appear to answer for such offence 20 days at the least before the session at which such indictment shall be found, he or she shall plead to such indictment, and trial shall proceed thereupon, at such same session of the peace, session of oyer and terminer, great session, or session of gaol delivery respectively, unless a writ of certiorari for removing such indictment into his Majesty's Court of King's Bench at Westminster or in Dublin shall be delivered at such session before the jury shall be sworn for such trial," shall be and the same is hereby repealed.

27. No person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any session of the peace, session of oyer and terminer, or session of gaol delivery; Provided always, that if the Court, upon the application of the person so indicted or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such Court may adjourn the trial of such person to the next subsequent Session, upon such terms as to bail or otherwise as to such Court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session without entering into any fresh recognizance for that purpose.

28. In any plea of autrefois convict or autrefois acquit it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the said offence charged in the indictment.

29. Whenever any person shall be convicted of any one of the offences following, as an indictable misdemeanor; that is to say, any cheat or fraud punishable at Common Law; any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, or to obstruct, prevent, pervert, or defeat the course of public justice; any escape or rescue from lawful custody on a criminal charge; any public and indecent exposure of the person; any indecent assault, or any assault occasioning actual bodily harm; any attempt to have carnal knowledge of a girl under 12 years of age; any public selling, or exposing for public sale or to public view, of any obscene book, print, picture, or other indecent exhibition; it shall be lawful for the Court to sentence the offender to be imprisoned for any term now warranted by law, and also to be kept to hard labour during the whole or any part of such term of imprisonment.

30. In the construction of this act the word "indictment" shall be understood to include "information," "inquisition," and "presentment," as well as indictment, and also any "plea," "replication," or other pleading, and any nisi prius record; and the terms "finding of the indictment" shall be understood to include "the taking of an inquisition," "the exhibiting of an information," and "the making a presentment;" and wherever in this act, in describing or referring to any person or party, matter, or thing, any word importing the singular number or masculine gender is used, the same shall be understood to include and shall be applied to several persons and parties as well as one person or party, and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter or thing; and the word "property" shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed.

31. This act shall come into operation on the 1st day of September, 1851.

32. Nothing in this act shall extend to Scotland.

LAW OF ATTORNEYS.

ILLEGAL PRACTICE.

In the case of *Thomas v. Lewis*, tried at Monmouth on the 8th Aug., it appeared that Mr. Charles Thomas Jones, the plaintiff's attorney, lived in London, though professing to practise at Merthyr, and had not been at Merthyr for months; that Mr. Jones' name did not appear on his office at Merthyr, but that the name of Mr. Thomas Griffin Philippotts did appear on the office door, and that he also lived in London, his visits to Merthyr being few and far between; and the whole question about Mr. Jones and Mr. Philippotts, and the managing clerk and the copying clerk, and whether the clerks were clerks to Jones or to Philippotts, or to both,

seemed to be involved in mystery; upon which state of circumstances Mr. Baron *Martin* animadverted with great censure, pointing out that the law had provided for the examination of attorneys as a safeguard for clients, who were entitled to their personal attention; whereas, if the system of Messrs. Jones and Phillips were to be generally adopted, great mischief would result.

REGISTRATION OF ASSURANCES.

OLIVER CROMWELL'S PLAN.

THE great names of Bacon and Cromwell have been mentioned in the discussion which has excited the general attention of the public and the profession, regarding the expediency of a General Register of Deeds. We are enabled, by the kindness of an antiquarian friend, to lay before our readers "The draught of an Act for County Registers," proposed in the time of the Commonwealth. It appears to have been printed in the year 1653, and at the same time various other measures of Law Reform were also under the consideration of Parliament, viz., "Wills and Administrations; preventing inconvenience, delay, charge, and irregularity in *Chancery* and *Common Law*, (as well in Common Pleas as Criminal and Capital Causes,) and for settling *County Judicatures*, Guardians of Orphans, Courts of *Appeal*, County Treasurers, and Workhouses; with Tables of Fees, and Short forms of Declarations."

Some of the subjects which are marked in italics, it will be observed, are still mooted in the present day. The proposed act for establishing "County Registers" was as follows:—

"Be it enacted by the authority of this present parliament, That at the Second General Sessions of the Peace to be holden next after the passing of this act for the City of London, and for all counties of England and Wales (which are not a city and county, or a town and county.) The justices then present, or the greater number of them, shall provide and appoint some convenient place within the respective counties of England and Wales, for a registry; And shall then also name six honest, able and understanding persons, to the Grand Jury after they be sworn, who shall (amongst their presentments) give up the names of two of the said six; of which two, the said justices shall elect one to be register of that county: And in like manner shall proceed from time to time to elect a new register, upon death or removal.

"And the whole city of Bristol (as to the place of registry and matters to be registered) is to be accounted part of the county of Somers-

set; the whole town of Newcastle, part of Duresm; and every other city and county, or town and county, to be part of the county within which the same doth lie: And justices of the peace within every such city and town, may take acknowledgements within their respective liberties of things done there, as justices of the peace of the county may do within the county, by virtue of this present act.

"And every such register is hereby authorized and enjoined to provide and keep a stamp to print with ink, having the arms of this Commonwealth, and encircled with the name of the respective county to which the same belongeth.

"And be it further enacted, That every person or corporation, which hath or shall have any incumbrance upon the lands, tenements, or hereditaments of any other, shall enter the same (or the effect thereof) together with their own name, surname and place of abode, with the true and certain time of the said incumbrance, in the registry of the county or counties where such person or corporation intend to charge or take benefit of the same.

"And of all incumbrances before the setting of the said registry, such entry shall be made within a year next after it is settled; And of all after the setting of the said registry, within 40 days from the time of such incumbrance had, made or granted: and in default of such entry, such incumbrance shall not charge the lands, tenements or hereditaments of any person, that (without notice of such incumbrance) shall (for valuable consideration) be purchaser of, or have a subsequent interest in or charge upon the same, before such incumbrance be registered as aforesaid.

"And if any person shall knowingly conceal any deed or instrument, whereby another is hindered from entering any incumbrance at the time of setting the said registry, within the time limited by this present act; such persons so concealing, shall forfeit the full value that any other person is damaged by such concealment, to the party that is so damaged thereby.

"And every person within age, or of unsound minde, or beyond the seas, and women covert, shall have for themselves and their respective heirs, executors and administrators, a full year from and after full age, sound minde, return from the sea, and being discoverd, to enter any incumbrance had, made or granted, before the passing of this present act; And all such incumbrances on the behalf of the Commonwealth, shall be entered in the respective counties, and within the time aforesaid, by the officers of the publique revenue, who ought to issue out proces for levying of the same: But all rights of pasturage, all sorts of common, fishings, fowlings, private ways and passages, privileges, incumbrances, by custom or prescription, title of dower, quit rents in money or otherwise, and rights or duties belonging to manors or seignories, at the time of passing this act, are not to be held or accounted incumbrances, to be registered within the intention of this present act.

"And be it further enacted, That all deeds,

conveyances, or other acts by any person of full age and sound minde, passing any inheritance, freehold, or term of years (other than estates by copy of Court-roll, and single leases in possession, not exceeding 21 years, or three lives, at such rent or more as hath been usually paid within 21 years next before; which estates and leases are thereby excepted, and not intended incumbrances within any clause of this act) and that all discharges or releases which bar, pass or extinguish any estate or right, and all assignments, surrenders, confirmations, reservations, conditions, covenants, limitations of uses, powers of revocation, and all trusts touching lands, tenements or hereditaments, or charges upon the same, and all assignments of debts amounting to 100*l.* or more, which shall be had or made after the setting of this registry, shall be acknowledged before some justice of the peace in the same county, and by him subscribed, for which he may receive 6*d.* and no more; and being so acknowledged, they shall be registered, together with the name of all the witnesses thereunto, in a fair book, to be safely kept in the registry of the said county where such lands, tenements or hereditaments lye and be.

"And be it further enacted, That where any incumbrance upon lands, tenements or hereditaments is satisfied, the party who ought to discharge the same, shall upon request make an acknowledgment, discharge and release thereof under his hand and seal, and shall acknowledge the same before a justice of peace, that it may be registered; and if he refuse so to do, the party satisfying such incumbrance, may maintain an action for recovery of what he paid in discharge of such incumbrance: And the like law, for any who shall pay money upon bond or bill at the day, if the party receiving the same do not deliver up the said bond or bill, or make oath (before some justice of the peace) that he hath lost it, and also give a release for the same.

"But if any person being in one county shall convey, pass, charge, release or discharge any lands, tenements or hereditaments lying in another county, he may acknowledge and enter the same as aforesaid, in the county where he then is; and the register of that county shall forthwith cause a certificate to be indorsed thereupon of the date of the registering, and sign the same with his name, and put thereto the seal of his registry: Upon which certificate, the register of the county where the said lands, tenements or hereditaments do lye, may and shall register the same.

"And it is further enacted, That every justice of peace, taking any acknowledgement aforesaid, shall either know the party so acknowledging, or be informed by credible witnesses, that such party is the same mentioned in the deed or act to be registered; and such justice of peace may examine any such parties or others on their oaths or otherwise, for discovering of the truth; and any person acknowledging such act or deed in any others name but his own, or counterfeiting the stamp

of any registry, or the name of any register aforesaid, shall be adjudged a felon, and shall suffer death, and incur other forfeitures as a felon.

"And be it further enacted, That every deed or conveyance so acknowledged and registered, shall be good in law against the parties so acknowledging the same, their heirs and assigns, and all others whom such persons may justly bar, and shall pass such estate or right as beneficially and effectually, as if the same had been passed by any fine with proclamations, common recovery, indenture enrolled, within six moneths in any Court of Record, or other course of common law or limitation of use.

"And in default of such entries within forty days next after the dates of such deeds, the same shall not be effectual against any who for valuable consideration shall be purchasers, or have subsequent interest in, or charge upon such lands, tenements, or hereditaments before the same be so registered as aforesaid, and such assignee of a debt shall be incapable to sue for the same until it be registered. Provided always, That every married woman that shall pass or bar any estate or right, shall first be examined alone by the justice of the peace, and shall express her free and full consent before such acknowledgement shall be admitted, and her husband joyn with her in the same deed.

"And be it further enacted, That every bond or bill obligatory, which shall be acknowledged by the party that made the same, and registered in manner as aforesaid, shall be of equal force with any statute staple, from the time of such registering, and within the county where it was so acknowledged and registered; and upon a certificate from the register to the sheriff, and oath made before the sheriff, how much of the debt and interest is unpaid, the sheriff shall forthwith proceed to do execution, as upon writs of extent, and make return thereof to the register, who shall enter it, and have like fee as is hereafter in this act appointed for copies.

"And be it further enacted, That a conveyance made, acknowledged, and registered according to the form of this act, from the time of registering thereof, shall be as good in law for any manors, lands, tenements, or hereditaments of ancient demesne as others, and shall be of equal force as to all manors, lands, tenements, and hereditaments within that county where it is so registered (to binde privies and strangers) as a fine well levied in the Court of Common Pleas with proclamations, by force of the statute made in the fourth year of King Henry the Seventh, or without; saving to all persons, their right, title, and interest, and like benefit of entry, action, and claim, after such conveyance so registered, as was saved by the said statute after a fine levied, and proclamation had and made; so as they make their entry, lring their action, or pursue their right, title, interest, or claim, within the same time after the registering such conveyance, as they ought to have done after such fine levied, and proclamations had and made; And saving also to all persons, not parties or privies to the said con-

veyance, the like and the same exception as was saved to persons not parties or privies to any such fine, by the statute aforesaid: And the passing of any estate by a fine to be levied with proclamations or without, from the time of setting the County-Register according to this act (as to any manors, lands, tenements, or hereditaments within the said county) is to be no more used.

"That in case any deed or bond so registered shall be lost or mislaid, so as the same cannot be produced, upon oath thereof made, any action may be brought and maintained upon a copy of the same deed or bond so registered, as if the said deed or bond were produced under the hand and seal of the party that acknowledged the same; and that every deed or bond indorsed, registered and attested by the stamp of the registry, shall and may be given in evidence upon all occasions, as any deed inrolled in a Court of Record, without any further proof.

"And it is further enacted, That every register so chosen as aforesaid, shall (before the execution of his office) take an oath either in open sessions or before two justices of the peace (to be certified to the next sessions) for his faithful execution of, and diligent attendance upon, the said office, and at the same time shall also give security by recognizance of 2,000*l.* to the Commonwealth, conditioned that he shall faithfully execute and diligently attend upon the said office; out of which security, satisfaction shall be made to any party by him damaged by any undue practice, neglect, or miscarriage in his said office; and he shall be further liable to be put out, upon just cause presented by the grand jury, to be tried and determined in open sessions. And the said register shall observe these rules and instructions following;

"Instructions for the Register.

"I. He shall provide one book with a fair margin, which shall be called *The Book of Entries*, wherein he shall shortly enter the names of the persons making the deed, instrument or incumbrance, the person to whom, and the nature thereof, with the date, and shall number the same in the margin: As for example,

"I. S. A judgement in the Common Pleas against I. N., the one and twentieth of May, 1651, for one thousand pounds debt, and twenty shillings costs, Roll, 21.

"J. D. An indenture of sale of lands in S., &c. to J. S. Dated the one and twentieth of May, 1651.

"And shall enter every deed and instrument in his book, in the order of time as the same are brought to him.

"II. He shall provide other fair books with large margins, called Register-books, and distinguished one from another by letters or otherwise, registering without delay all things appointed by this act, with the number in the margin agreeing with that in the book of

entries, and close to the end of the last word of everything registered, the writing clerk shall put to his name; and then the thing so registered shall be delivered back to the party that brought it, and indorsed with the day when the same is registered (which is to be that day when the same was first left with him) and the book and leaf wherein it is begun to be registered, and subscribe his name, and put to the stamp of his office: And when the same is so registered, then he shall make a short entry thereof in his book of entries; As for example,

"Registered the two and twentieth of May, 1652. Book A., Page 1.

"III. The said Register-books shall be of one size, and each of them to contain a certain equal number of leaves, to be figured and ruled on either side and end of the page, leaving a margin, and a certain equal number of lines written in every page, writing 10 words at least in every line one with another; which also shall be written in a fair legible hand, without interlineations, blots or rasures, as much as may be: And in case any such shall happen, the register shall mention the same in his indorsement.

"IV. The register of the City of London, besides the former books, shall keep one book distinct, wherein he shall enter all such goods, estate or trust of the same, as shall be discovered by any person whatsoever to belong to any in execution, or against whom execution is awarded within this Commonwealth.

"V. Where any release or other discharge is brought to the register, besides the entry thereof, he shall also make a note of the same in the margin of that book where the charge or incumbrance was entered.

"VI. The register for his indorsement and stamp, shall receive 12*d.* to his own use, and 12*d.* to the use of the Commonwealth: And if the thing registered exceed 12 lines, for every 12 lines with 10 words in a line, besides the first 12 lines, 3*d.* and no more, whereof 1*d.* to the treasury of the county towards the county stock.

"VII. Every register shall make and keep perfect alphabetical tables and kalenders, whereby the names of persons, conveyances, and incumbrances, may be readily found upon search; And for every search shall receive 6*d.* to his own use and no more, and shall permit any person (searching in the presence of the register or one of the clerks, and not otherwise) to read over anything by him searched for, but not to take notes or copies, but such as shall be copied out by the register or his known clerks, whereof the searcher may take such part, and as little as he please, paying after the rate of 2*d.* for every twelve lines; and if he requires to have it certified by the register, under his hand and stamp of office, he shall pay more to the register, 6*d.* to his own use, and 12*d.* to the use of the Commonwealth: And of all such certificates of the register shall keep a book, wherein he shall enter a short note of the certificate, and give notice thereof to his chief clerk, who shall also keep a little book,

wherein he shall enter a short note of all such certificates.

"VIII. The register shall put in honest and able clerks, for whom he will answer, and shall execute this office in person and not by deputy, saving time of sickness; during which time, and in the vacancy of the office by death, the chief clerk shall in his own name do, receive, and act as the register, and keep the said printing stamp; and the hours of attendance in the office of registry, shall be from nine to twelve in the forenoon, and from two to four in the afternoon of every day, except the Lord's-day, and days of publique humiliation and thanksgiving: And no candlelight or fire shall come into the place where the register books are kept.

"IX. Any three of the justices of the peace, upon reasonable cause appearing to them, may license the register to be absent from the office, so as they exceed not 40 days in any one year: And that during the time of his absence, the chief clerk shall constantly attend and execute the said office.

"And be it further enacted, That the greater number of the said justices of the peace respectively, at the General Sessions shall choose one to be a treasurer for the county for a year then next ensuing, and until another be elected, and so shall elect from year to year, or oftener in case of death; which said treasurer is hereby made a corporation, to take lands or goods, or other things for benefit of the said county, and to sue and be sued, and to have continuance for ever; and shall manage and dispose of the stock of the county, according to the order of the justices in publique Sessions, which order is to be signed by five of the justices at the least who made the said order: And every such treasurer (at the going out of his office) his heirs, executors, or administrators, shall account to the next succeeding treasurer, and pay and deliver over by indenture, all things in his or their hands belonging to the county stock."

ATTACHMENTS IN SATISFACTION OF DEBTS.

PROCEEDINGS IN THE LORD MAYOR'S COURT.

SOME very learned mercantile man having in the leading journal attacked the process by foreign attachment in the Lord Mayor's Court, I take leave to differ from him *in toto*. On the contrary, I should be glad to see the principle extended, and a plaintiff enabled to attach or take in execution debts due from a defendant from any person wherever resident in Great Britain. I am assured that much good would result from it.

CIVIS.

[Since the abolition of arrest on mesne process, it has evidently been the intention of the legislature to afford increased facilities for the seizure of property. The Abolition of

Arrest Act itself gave power to take in execution various securities which were not previously available, and amongst the other projected changes in the law, the suggestion of our correspondent is worthy of consideration. The mode of proceeding would be, we presume, by a judge's order obtained in an action in one of the Superior Courts.—*Ed.*]

CERTIFICATE DUTY REPEAL.

VOTES OF THE LAWYERS IN PARLIAMENT. (Including those who have retired from Practice.)

Session, 1850.	For	Against.
English Barristers	14	13 ¹
Irish	4	1 ¹
Scotch	2	4
English Solicitors	7	—
Irish	1	—
	28	18

<i>Absent.</i>		
English Barristers	5	
Irish	2	
Scotch	3	
	10	

Session, 1851.		
English Barristers	7	11 ¹
Irish	1	—
Scotch	1	1 ¹
English Solicitors	6	—
Irish	1	—
	16	12

<i>Absent.</i>		
English Barristers	13	
Irish	5	
Scotch	4	
English Solicitors	2	
	24	

The following are the names of those who voted *for* or *against* or were *absent* in the Session 1851.

BARRISTERS.

For.

Armstrong, R. B., Q. C.
Coles, Hen. B.
Evans, John, Q. C.
Ewart, William.
Greene, Thomas.
Hogg, Sir James W.
O'Connell, John.
Richards, Richard.
Stuart, John, Q. C.

¹ Of these, five hold office under the government.

² Office-holder.

³ Of these, six hold office under government.

⁴ Office-holder.

Against.

Baines, M. T., Q. C.
Bouverie, Hon. E. P.
Brockman, E. D.
Cardwell, Edward.
Cockburn, Sir A.
Craig, Sir W. G.
Crowder, R. B., Q. C.
Dundas, Sir D.
Hayter, W. G., Q. C.
Headlam, T. E.
Roxilly, Sir John.
Wood, Sir Charles.

ABSENT.

English.

Aglionby, H. A.
Bernal, R.
Cabbell, B. B.
Grev, Sir G.
Hildyard, R. C.
Inglis, Sir R. H.
Nicholl, Right Hon. John J.
Palmer, R.
Tancred, H. W.
Theaiger, Sir F.
Villiers, Hon. C. P.

Walpole, S. H.
Wigram, L. T.

Irish.

Anstey, T. C.
Butler, P. C.
Grattan, Henry.
Grogan, Edward.
O'Connell, M.

Scotch.

Drummond, H. H.
Horsman, Edward.
Loch, James.
Wortley, Right Hon. J. A. S.

SOLICITORS.

For.

Barrow, William H.
Benbow, John.
Blewitt, R. J.
Bremridge, R.
Hodgson, W. N.
Mullings, J. R.
Sadleir, John.

ABSENT.

Cobbold, J. C.
Neeld, Joseph.

RECENT DECISIONS IN THE SUPERIOR COURTS.
AND SHORT NOTES OF CASES.

House of Lords.

Baron de Bode v. Reginam. July 10, 11, 1851.

LIQUIDATION OF CLAIMS OF BRITISH SUBJECTS IN RESPECT OF CONFISCATED ESTATES ON FRANCE.—CONSTRUCTION OF STAT. 59 GEO. 3, C. 31.

Held, *affirming the decision of the Court of Exchequer Chamber*, 14 Jur. 970, and of the *Court of Queen's Bench*, 8 Q. B. 208, that *an individual who claims to be entitled to compensation under the treaties mentioned in the statute of 59 G. 3, c. 31, or one of them, or under the same treaties, or one of them, and the said statute, or under the statute, has no other remedy by which to recover such compensation, except by application to the Commissioners, and by appeal from their decision to the King in Council, according to the provisions of the statute.*

This was a writ of error from the judgment of the Court of Exchequer Chamber, reported 14 Jurist, 970, affirming the judgment of the Court of Queen's Bench, 8 Q. B. 208, where the facts of the case are fully set out, and which it is unnecessary to repeat, the appeal being decided upon the construction of the 59 Geo. 3, c. 31, which, after reciting that the Commissioners of Arbitration, appointed to examine the claims of British subjects upon the French government in respect of property unduly confiscated, had caused to be inserted in a register the names of all the claimants who had presented themselves within the period prescribed by the convention, enacts, that in order to enable them to complete the examination and liquidation of the claims of such persons who

shall have caused their names and claims to be duly inserted in the said registers, it shall be lawful for the said Commissioners to apportion, divide, and distribute the several sums of money, and to order the same to be paid to and among the several claimants whose names are duly entered in the said registers, in full if the sums paid were sufficient, in part if insufficient, such payment in full or in part, and any rejection of any such claims as shall by the said Commissioners, on appeal to his Majesty in Council, be adjudged not to be within the true meaning of the said conventions or any of them, shall be respectively final and conclusive, and shall be held to be in full and entire discharge of the French government and of his Majesty's government, from any demands in respect of any claims duly registered, and the Commissioners were empowered to sell the unappropriated funds and transfer the proceeds to England for the purpose of being applied to liquidate claims, or, if all were liquidated, to such purposes as the Commissioners of the Treasury should appoint.

Manning, S. L., and Anstey for the plaintiff in error; the *Attorney-General* and *Welsby* for the Crown.

A question having been framed for the opinion of the learned judges,

The *Lord Chief Baron* delivered the opinion of the judges as follows:—Your lordships having proposed to the judges the following question:—"Has an individual who claims to be entitled to compensation under the treaties mentioned in the statute of 59 Geo. 3, c. 31, or one of them, or under the same treaties, or one of them, and the said statute, or under the

statute, any other and what remedy by which to recover such compensation, except by application to the Commissioners, and by appeal from their decision to the king in council, according to the provisions of the statute?" I have to report to your lordships the unanimous opinion of the judges present,¹ that according to the true construction of the statute all the money received from the French Government by virtue of the treaties or conventions referred to ought to be applied according to its directions, and that the suppliant has no claim, except under the statute and in the mode pointed out by its provisions.

We think that there is no foundation for a claim under a petition of right, and we are all clearly of opinion that the statute does dispose of the whole fund and direct how it is to be applied.

The argument for the suppliant is, that it disposes only of such part of the fund as would be sufficient to satisfy all the claimants whose names were on the register before the passing of the act, leaving the surplus in the hands of the Crown liable to the claims of those British subjects which had been preferred by them within three months, according to the convention, and that the suppliant's claim was not entered in the register before the act, and was preferred within three months (two facts found by the inquiry to be true). If such were the construction of the statute, it would be necessary to consider what was the liability of the sovereign of this country and his successors if the act had not passed. But we are all satisfied that such is not the construction of the act, but that it meant to provide for the application of the whole fund, and leave no part to be dealt with except under its enactments. Any claimant, therefore, upon the fund must, in our opinion, proceed according to the provisions of the statute, and has no other remedy.

In answering the question proposed by your Lordships we have not thought it necessary to state our reasons in detail, because we unanimously concur in the judgment pronounced by the Court of Exchequer Chamber, and in the reasons given for the judgment.

The Lord Chancellor, in moving that the appeal should be dismissed, and the judgment below be affirmed, said, that the question in the case being simply a question of law: the construction of the statute referred to in the opinion of the learned Judges, and the learned Judges having now given to the House their opinion, that by the true construction of that statute the only remedy which persons have who make their claim for compensation upon the footing of particular treaties was according to the provisions of that statute, the whole question raised by the writ of error was disposed of by that opinion.

Judgment for the defendant in error.

¹ Pollock, L. C. B., Alderson, B., Patteson and Erle, JJ., Platt, B., Williams and Taft, JJ.

Lord Chancellor.

In re Laveday. July 25, 1851.

LUNATIC.—TRAVERSE OF INQUISITION.—ALLOWANCE OUT OF ESTATE, FOR EXPENSES.

*The Lord Chancellor, in a case where leave had been granted to traverse the inquisition of lunacy and the estate was small, made an order for the allowance of 200*l.* for the purposes of the traverse.*

IN this case leave had been given on May 28 last to the lunatic to traverse the finding of the jury and a reference directed to the Master as to any allowance out of the estate for the purpose of the traverse. It appeared that the jury had been divided, although at length they returned a verdict of his being incapable to take care of himself and his affairs.

An order was accordingly now sought for payment of the sum of 350*l.* to the lunatic's private solicitor.

Rolt and W. H. Terrell for the lunatic in support; the Solicitor-General and Amplett for the committee, contra.

The Lord Chancellor said, that having regard to the smallness of the estate, an order could only be made for 200*l.*

Master of the Rolls.

Kent v. Jackson. July 25, 26, 28, 29, 1851.

FOREIGN RAILWAY COMPANY.—RETURN OF DEPOSITS TO ENGLISH SHAREHOLDERS.—BREACH OF TRUST.

A bill was dismissed with costs which was filed against directors of a railway company, who had resigned and their resignation been accepted before the plaintiff joined the undertaking, seeking a declaration that they were liable to refund certain moneys which had been repaid by them to the English shareholders, and the transaction had been sanctioned by the directors upon the defendants paying over as the balance of account the residue of a fund which had been received by them for deposits and repaid in accordance with a circular authorizing such return.

THIS bill was filed by John King Kent on behalf of himself and the other shareholders, except the defendants, in a railway company which had been formed in 1845 to make a railway from Marchiennes-au-Pont, near Charleroi, in Belgium, to Erquelines, in Hainault, against William Jackson and the assignees of Charles William Graham, a bankrupt, who were the acting directors in England, praying a declaration that they were liable to refund to the company certain sums of money, with interest thereon, which they had paid back to the English shareholders in respect of deposits. It appeared that, in November, 1845, the defendants had resigned their office of directors, and that their resignation had been accepted by the English directors; but that,

upon receiving a circular which had been sent to and circulated among the English shareholders, to the effect that the deposits would be returned to such as might chose to withdraw from the undertaking, they had paid the sums in question which were standing in their names at an English bank in respect of returned deposits, and applied another portion in the purchase of shares, and afterwards paid the balance to the directors on their sanctioning such application of the funds and receiving the same as the balance of account. It also appeared that the plaintiff did not become a shareholder until 1848.

Roundell Palmer and Shee, for the plaintiff; *Walpole, Willcock, and Amphlett*, for the defendant Jackson; *Bosill*, for the assignees of Graham.

The Master of the Rolls said, that as the defendants had resigned their office of directors, and their resignation had been accepted, they must be considered as strangers to the undertaking, and that it was to be presumed these matters had been duly brought before and sanctioned by meetings of the shareholders, and dismissed the bill with costs.

Vice-Chancellor Knight Bruce.

In re Dickenson. July 25, 1851.

TRUSTEE ACT, 1850.—CONVEYANCE FOR INFANT HEIR-AT-LAW.

The Court declined, on petition, under the 13 & 14 Vict. c. 60, to appoint a person on behalf of an infant,—who was the heir-at-law of an intestate, who had sold certain real estates to the petitioner, and received the purchase-money, but died without conveying,—to convey the property to the petitioner, where the infant did not appear, and there was no guardian ad litem, but allowed the petition to stand over with liberty to file a bill or claim.

This petition was presented under the 13 & 14 Vict. c. 60, on behalf of Elizabeth Anne Dickenson, praying the appointment of a person on behalf of an infant, who was heir-at-law to an intestate, who had contracted to sell certain real estates to the petitioner, and had received the purchase-money, but died without executing the conveyance.

Turriano, in support.

The Vice-Chancellor, upon being informed that no one appeared for the infant, and that no guardian ad litem had been appointed, said, that the petition must be dismissed or stand over with liberty to file a bill or claim, and on the election of the petitioner's counsel, directed it to stand over accordingly.

Vice-Chancellor Lord Cranworth.

Gib v. Dibley. July 26, 1851.

CREDITOR'S SUIT.—STAY OF PROCEEDINGS IN SECOND SUIT BY ANOTHER CREDITOR.—DECREE IN CLAIM.—*LIS PENDENS*.

On an application to stay the proceedings in a creditor's suit, on the ground a decree had been obtained upon a claim filed by another creditor against the same intestate, under which all the relief sought by the bill could be obtained: held, that a decree in such claim would operate as a lis pendens, and the application was granted on the defendant consenting to introduce in the former decree an order for the appointment of a receiver of the real estate, and for an injunction to restrain him from collecting the personal estate, which formed the additional relief sought by the bill.

A MOTION was made in this case, which was a creditor's suit, to stay the proceedings there-in, upon the ground that a decree had been made in a claim filed by another creditor of the same intestate, under which the present plaintiff would obtain all he sought by his bill. It was objected on behalf of the plaintiff, that the decree upon the claim had not the effect of a decree in a suit, and constitute a *lis pendens*, and that the relief sought, viz., the appointment of a receiver of the real estate, and an injunction to restrain the defendant from collecting the personal estate, could not be obtained in the first suit.

Bethell, Rolt, Bunny and Money, for the several parties.

Cur. ad. ult.

The Vice Chancellor said, that there was no distinction between a decree on a claim and a decree in a suit as creating a *lis pendens*, and that the objection must be overruled. As to the difference in the relief sought by the two suits, the objection appeared well founded, but upon the defendant consenting to introduce into the decree already made the appointment of a receiver and the injunction, an order to stay would be made—costs to be reserved.

Vice-Chancellor Turner.

In re Poyer's Trust. July 26, 1851.

TRUSTEE ACT, 1850.—APPOINTMENT OF TRUSTEE IN LIEU OF TRUSTEE OUT OF JURISDICTION.—VESTING ORDER.

Seemle, that the effect of an order under s. 10 of the 13 & 14 Vict. c. 60, to vest the trust estates in the continuing trustee and the new trustee would be to sever the joint tenancy, and the Court therefore, and on the ground it might give rise to inconvenience in any future dealings, made an order under s. 24 appointing the solicitor of the petitioners to convey to the proposed trustees.

THIS was a petition under the 13 & 14 Vict. c. 60, for the appointment of a new trustee in the place of a trustee who had gone out of the jurisdiction, and for an order vesting the trust estates in the continuing trustee and such new trustee.

By s. 10 of the act, it is enacted, that "when any person or persons shall be seised or pos-

seised of any lands jointly with a person out of the jurisdiction of the Court of Chancery, or who cannot be found, it shall be lawful for the said Court to make an order vesting the lands in the person or persons so jointly seised or possessed, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance or assignment of the lands in the same manner for the same estate."

R. Pryor, in support.

The *Vice-Chancellor* said, that as the effect of a conveyance under s. 10 would be to sever the joint tenancy, and might give rise to inconvenience in future transactions with the trust property, it would be preferable to appoint a person to convey the trust premises to the proposed trustees under s. 20,¹ and an order was taken appointing the solicitor of the petitioners to convey accordingly.

Court of Queen's Bench.

Rowe v. Manser. June 9, 16, 1851.

ACTION ON PROMISSORY NOTE. — NEW TRIAL ON THE GROUND OF SURPRISE. — PRODUCTION OF LETTER.

A rule was made absolute for a new trial, upon the ground of surprise, of an action on a promissory note, in which the plaintiff obtained a verdict on the production in evidence of a letter in reference thereto, without the usual notice to admit, and the defendant had no opportunity afforded to him of bringing witnesses to confirm the testimony of one of his witnesses, that the letter was a forgery.

THIS was a rule nisi granted on April 23 last, for a new trial, on the ground of surprise, and that the verdict was against the evidence. The action was brought on a promissory note for 2,000*l.*, payable six months after its date of December 26, 1844, and drawn in favour of Mrs. Ann Rayner, the defendant's daughter, to which the defendant pleaded, that he did not make the note. On the trial before Lord Campbell, C. J., it appeared on behalf of the plaintiff, that the defendant had been applied to to become surety for his daughter's husband,

who was an artist, for certain sums advanced by the plaintiff, a picture dealer, but had refused to do so, and agreed to give his daughter the note in question, upon an understanding it was not to be made use of until his death. A letter was put in evidence, dated January 2, 1849, written by the defendant to the daughter, and accounting for the delay in sending the note. The plaintiff having thereupon obtained a verdict, this rule had been granted.

In support of the rule it was submitted that, the letter was put in evidence without the usual notice to admit, and that the defendant had not had an opportunity of confirming the evidence of the daughter, which went to show the letter was a forgery.

Bovill and *Hawkins* showed cause against the rule, which was supported by *M. Chambers, Willes, and Wille.*

The Court said, the matter should be made the subject of investigation before another jury, and made the rule absolute for a new trial.

Court of Common Pleas.

Rosetto and others v. Gurney. May 6, 7, 30, 1851.

MARINE INSURANCE. — ABANDONMENT AND CLAIM AS FOR A TOTAL LOSS. — AVERAGE LOSS.

Held, making absolute a rule for a new trial, that the jury in determining whether there has been a total or an average loss on a policy of insurance on the cargo of a vessel consisting of wheat should find the cost of unshipping the cargo, or any part of it, and drying and warehousing it and transshipping it into a new bottom, and the cost of the difference, if any, in the transit to the port of destination, if it could only be effected at a higher rate than the original rate of freight; and that then if the aggregate costs should not exceed the value of the cargo, or of such part of it, the loss would be an average and not a total loss.

THIS was an action on a policy of insurance effected with the Alliance Marine Insurance Company for 4,500*l.* upon the cargo of a ship called the Hebe, on a voyage from Odessa to Liverpool, which consisted of 3,700 quarters of wheat. It appeared on the trial before Mr. Baron Platt, at the Liverpool Assizes, that the vessel having sustained damage was obliged to put into Constantinople where she was repaired and an hypothecation bond on the ship and cargo given for the repairs amounting to 1,850*l.*, and that upon the voyage home she was towed in a disabled state into Cork and incurred a liability for salvage which the Irish Admiralty Court decreed at 450*l.*, the costs amounting to 263*l.*, and upon the holder of the hypothecation bond claiming payment, the ship and cargo were directed to be sold. The cargo was thereupon killed and sold at Cork for 4,000*l.*, and the vessel for 600*l.*, but the several charges thereon including the expenses of drying and charge for

¹ Which empowers the Court, "should it be deemed more convenient, to make an order appointing a person to convey or assign such lands, or release or dispose of such contingent right; and the conveyance or assignment, or release or disposition, of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect, in conveying or assigning the lands, or releasing or disposing of the contingent right, as an order" "would in the particular case have had under the provisions of this act."

freight, amounting to 4,328*l.* the owners gave notice of abandonment and claimed as for a total loss. The verdict was found for the plaintiffs, and this rule had been granted on April 16 last, upon leave reserved to enter it for the defendant or for a new trial.

Knowles, Q. C., Crompton, and Blackburn showed cause, citing *Ross v. Salvador*, 3 Bing. N. C. 266.

Watson, Q. C., and Hugh Hill in support, on the ground the loss was an average and not a total loss.

The Court, after taking time to consider, said, that it was the duty of the master, upon the arrival of the ship at Cork, to have ascertained whether it was practicable to have the cargo dried and conveyed to Liverpool in another ship, having regard to the expense of so doing and the value of the cargo, and the jury having found that that could be done in respect of 1700 quarters of the wheat, the verdict for a total loss could not be supported. The jury had taken into consideration as the basis of their calculation the expenses of drying and of conveyance to Liverpool, but there was also the cost of unshipping the cargo, warehousing it, and transshipping it into a new bottom, and the difference, if any, in the rate of freight to be added. And the rule for a new trial was therefore made absolute.

Court of Exchequer.

Longmead and wife v. Holliday. May 3. July 10, 1851.

HUSBAND AND WIFE.—ACTION FOR INJURIES SUSTAINED BY WIFE.—MIS-JOINDER OF WIFE.

On the trial of an action brought by the plaintiff and his wife to recover damages from the defendant for having sold a patent naphtha lamp, on the lighting of which an explosion took place whereby the female plaintiff was seriously injured, the jury

found that the lamp was defective, but the defendant was not aware of it, and the plaintiffs obtained a verdict subject to a rule. A rule having accordingly been obtained to enter a nonsuit, it was made absolute on the ground that the misfeasance not being direct between the defendant and the wife, the defendant was only liable to the person with whom the contract was made, and that the wife should not therefore have been joined.

A RULE nisi had been granted on leave reserved to enter a nonsuit in this action, which was brought by the plaintiff and his wife to recover damages for injuries sustained by the latter by reason of the bursting of a patent naphtha lamp which had been purchased of the defendant, and which the declaration alleged he had deceitfully warranted to be fit for lighting rooms. On the trial before Mr. Baron Martin the plaintiff obtained a verdict, but the jury having found that although the lamp was defective the defendant was not aware of it, and had made no fraudulent misrepresentation, leave was reserved to move for the present rule.

Miller, S. L., and R. B. Miller, now showed cause; *Watson and Webster*, in support.

The Court said, that although there were cases in which a person not making the contract might sue for injuries sustained by reason of a breach of such contract, it was only where there was a direct misfeasance, as a patient unskillfully treated by a surgeon employed by a third person, or a servant injured through the negligence of a coachman where the contract was with his master and also where an instrument was dangerous in itself. But in the present case it only became so by the act of the buyer by lighting it, and there was no misfeasance on the part of the seller, who was consequently only liable to the party with whom the contract had been made, and the wife therefore ought not to have been joined. The rule must be made absolute to enter a nonsuit.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF PROPERTY AND CONVEYANCING.

[Concluded from page 368]

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 36.

Bankruptcy and Insolvency, pp. 105, 125.

Lacey, p. 147.

Courts of Equity :

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, pp. 204, 246, 265.

Law relating to Trustees, p. 285.

Evidence, pp. 306, 326.

Jurisdiction in Suits for Discovery, p. 347.
Law of Property and Conveyancing, p. 366.]

MORTGAGE.

Trustee and cestui que trust.—*P. A. L.* was engaged in a speculation in New South Wales, in partnership with *M.* and three other persons, *M.* being interested as executor of a deceased partner. *M.*, and one *F.* were the London agents of the concern. In 1830, *P. A. L.* became bankrupt, being at the time indebted to the partnership concern for advances made in respect of his share. He disputed the commission, and the concern being brought into a state of great embarrassment and difficulty by his circumstances and conduct, a deed was executed in Aug. 1829, whereby *P. A. L.* assigned his share to *M.* and *F.* in trust to secure the amount due from him to the concern, and

subject thereto in trust for *P. A. L.*; and *P. A. L.* covenanted not to interfere in the control or management of the concern. In Dec. 1831, *P. A. L.* (his commission still existing) agreed, with the assistance of solicitors acting on his behalf, to release his interest to his partner, in consideration of 250*l.*, but the completion of this contract was deferred by reason of the *supersedeas* not having been obtained. *P. A. L.* afterwards received 50*l.* on account of the 250*l.*, and otherwise recognized the agreement. The agreement was, on the 2nd May, 1836, and at his request, completed, without the intervention of any professional person on his behalf, and no further account and explanation appear to have been furnished him. In May, 1839, having obtained an assignment of his interest from his assignees, he filed a bill to set aside the deeds of Aug. 1829, and May, 1836, on the grounds of fraud, misrepresentation, concealment, and the gross inadequacy of the consideration; but the Court dismissed the bill with costs;—holding that the transactions were in themselves unobjectionable, and were dealings with the property which were not connected with any trusts between the parties, and were not to be regarded as a purchase of trust-property by trustees for their own advantage, and consequently open to be impeached in a Court of Equity. The decision of the Master of the Rolls, 11 Bear. 329, affirmed. *Knight v. Marjoribanks*, 2 H. & T. 308; 2 M'N. & G. 10.

See *Merger*.

NUISANCE.

See *Specific Performance*, 1.

QUALIFIED ACCEPTANCE OF OFFER.

See *Contract*, 2.

RELEASE.

See *Construction of Deed*.

RENEWAL OF LEASE.

Costs.—A contract by a lessee under an ecclesiastical corporation, whilst he was in treaty with the corporation for the renewal of his lease, to sell the leasehold premises, does not necessarily throw upon him the obligation of procuring the renewal of the lease at his own expense, for the benefit of the purchaser;—whether, if the vendor after the contract procure such renewed lease, the purchaser is not entitled to take it without bearing the expense of the renewal—*quare*. *Monro v. Taylor*, 8 Hare, 51.

SALE UNDER ORDER OF COURT.

1. *Property not intended to be sold included in contract of sale*.—*Rescinding contract*.—*Compensation*.—If property not intended to be sold be, by the ignorance or neglect of the vendor's agent, included in a contract for sale with other property intended to be sold, a case may arise in which the Court will refuse to compel a specific performance of the whole contract; and if in such case the purchaser should decline to take so much as was intended to be sold, the course which the Court might

adopt would probably be to sustain the interfering, leaving the purchaser to his remedy at law; but it certainly would not rescind the contract. This course, however, cannot be followed in reference to sales under orders of the Court, in which the Court must decide whether the sale is to be carried into effect or the property is sold; but in these cases it is expedient, as far as possible, to adopt the rules which regulate the practice as between ordinary vendors and purchasers.

Thus, in the case of a sale under the order of the Court, it being clear that a certain portion of property was not intended by the vendor to be included in the contract of sale, the Court, in the absence of any proof of misconduct in the purchaser or his agent, refused to compel a specific performance by the purchaser excluding the portion in question.

The purchaser, however, electing to take exclusive of the portion of property in dispute, the Court ordered accordingly, and without compensation. *Alenby v. Kinnaird*, 2 M'N. & G. 1.

2. By the conditions of sale under a decree, it was provided, that the purchaser of each lot should pay the remainder of his purchase-money into the bank, to the credit of the cause, on or before the 26th of Dec. 1845, and should then be entitled to the receipt of the rents from the 25th of the same month; but if the purchaser should fail in making such payment, then and in such case, and from whatever cause the delay might have arisen, he should pay interest at the rate of 5*l.* per cent. per annum on the balance of his purchase-money, from that day until the payment thereof. It was also provided, that the vendors should, within three days from the confirmation of the purchase, deliver an abstract and deduce a good title to the lots sold. The order nisi was confirmed absolutely on the 4th of Dec. 1845, and no abstract was delivered to the purchaser until the 3rd of Jan. 1846, and the title was not completed until Aug. 1847. On the 23rd of Dec. 1845, the purchaser deposited the balance of his purchase-money with his private bankers, at 2*l.* 10*s.* per cent. per annum interest, and gave notice thereof to the vendors, and that the difference of interest between 5*l.* per cent. and 2*l.* 10*s.* from the 7th Dec. 1845, must be at the loss of the vendors, so long as they delayed the delivery of the abstract. In Aug. 1847, the purchaser paid the balance of his purchase-money, with 5*l.* per cent. interest, into Court, without prejudice to his right to compensation or allowance, by reason of the delay on the part of the vendors in completing the title to the purchased estate: *Held*, on petition, reversing the decision of the Court below, that the purchaser was entitled to compensation, and for that purpose a reference was ordered to the Master to inquire and ascertain from what time a good title was shown, the payment of interest by the purchaser to commence from that time, and not earlier.

[*Esdaile v. Stephenson*, 1 S. & S. 122, not followed.]

In cases like the present, the principle strictly carried out, is, to postpone the payment of the purchase-money, till the time when a good title was shown, the vendor being entitled to the rents up to that time, and the purchaser paying interest from that time; such time to be ascertained by the Master under the order of reference. *De Visne v. De Visne*, 1 H. & T. 408; 1 M.N. & G. 336.

3. The purchase-money of an estate sold under decree in a suit, paid into Court to the credit of the cause, becomes the fund of all parties to the suit: *Held*, therefore, that they were properly served with a petition respecting such purchase-money. *De Vinne v. De Visne*, 1 M.N. & G. 336.

SPECIFIC PERFORMANCE.

1. *Existence of nuisance in neighbourhood.*—Whether the existence of a nuisance in the neighbourhood of a house contracted to be purchased for a residence, which nuisance is known to the vendor, and is one which a provident purchaser could not discover, is a ground for refusing a decree for specific performance of a contract; and whether otherwise, if the nuisance be not known to the vendor, *quære*. *Lucas v. James*, 7 Harp. 410.

2. *Lease.*—*Supplemental answer.*—An agreement was entered into between a lessor and lessee, for releasing the lessee from all liability on certain payments being made by the lessee to the lessor, and on the lessee assigning to the lessor all his interest in the lease. At the date of the agreement, the lessor had notice that the lessee had demised the property by way of mortgage, with a power of sale which had become absolute. In a suit by the lessee, for a specific performance of the agreement, one of the witnesses deposed that this power of sale had been exercised, but that fact was not put in issue by the pleadings: *Held*, that it might constitute a defence, if the lessor had no notice of it, and that the plaintiff was entitled to the option of having his bill dismissed without costs, or of having an inquiry as to the circumstances of the sale.

The result of the inquiry being, that the defendant had notice of the power of sale having become absolute when he entered into the agreement, and had notice of the sale when he put in his answer, but not previously, the Court directed a specific performance of the agreement, and an injunction against proceedings at law on the covenant in the lease.

After the plaintiff had obtained the common injunction, the defendant put in his answer, and denied the commission by himself or his agent of certain acts which it was considered material to the plaintiff's case to prove to have been so committed. The defendant then discovered that the denial was, as to the acts of his agent, erroneous. He afterwards obtained an order nisi to dissolve the injunction, which, after argument upon the erroneous answer, was made absolute. Afterwards, on an affidavit ascribing the error in the answer to incorrect information, he moved for leave to

file a supplemental answer. The plaintiff opposed the motion, and made an affidavit that he had intimated an intention to prosecute the defendant for perjury. On the defendant denying, by affidavit, that he had heard of any such intention, he was allowed to file a supplemental answer. *Phelps v. Prothero*, 2 De G. & S. 274.

See Contract.

TIME, ESSENCE OF CONTRACT.

1. If time is to be considered as of the essence of a contract, that point must be made promptly. *Monro v. Taylor*, 8 Hare, 62.

2. *Costs of suit.*—Although a good title was not shown by the vendor until during the pendency of the reference, the Court held that the purchaser must nevertheless bear the costs of the suit, it being manifest, that, if the particular evidence which completed the title had been produced before the bill was filed, yet the suit could not have been avoided. *Monro v. Taylor*, 8 Hare, 51.

TITLE.

Easement.—The owner of land, situated on an acclivity, conveyed, by a deed of 1816, a portion of lower land, with liberty to enter on upper lands, and fetch water from a spring, and to cut open, cleanse, and cover in, such gutters and drains as might be necessary for the purpose of conducting the spring to the conveyed land; and also, with liberty to pass and repass, for ingress and egress, on the upper land around or adjoining the conveyed land, and to put any ladders against the cottages then intended to be built upon the conveyed land.

By another deed of 1820, other part of the lower land was conveyed, with liberty to take water from specified springs in the higher land, and to make such reservoirs in a particular field, part thereof, as might be necessary for taking up water for family use and other necessary purposes, and with liberty to pass for ingress and egress in the upper land surrounding or adjoining the conveyed land.

By other deeds of 1824, other portions of the lower land were released, with all water.—courses, particularly as the same ran to an inn on the conveyed land, from the upper land.

By other deeds of 1825, further portions of the lower land were released, with liberty to fetch water for family and domestic uses, at a well on the higher land.

By other deeds of 1834, other part of the lower land was released, with liberty to the lessee to make a covered goit, or watercourse, across the bottom part of a field, part of the upper land, and to open and repair the same when necessary.

Several years afterwards, the upper land was sold, according to a particular, describing it as fit for building, and subject to conditions of sale, providing, that, if any mistake were made, in the description of the premises, or if any other error should appear in the particulars, such error or omission should not annul the sale, but compensation should be given or

taken. The existence of the easements was not stated in the particulars or conditions.

Held, first, that the circumstance of the purchaser living in the neighbourhood, being acquainted with the property, and passing constantly some of the wells on the lower land, supplied from the upper land, did not affect him with notice of the existence of the easements.

Secondly, that the existence of the easements, granted by any one of the deeds of 1816, 1820, and 1834, alone constituted a material defect in the title to the upper land.

Thirdly, that the existence of the easements, granted by the deeds of 1824 and 1825, would have been alone sufficient to render the title subject to such serious doubt, that a purchaser could not be compelled to accept it.

Fourthly, that, under the circumstances, and, inasmuch as the whole purchased land did not exceed thirty acres, the purchaser could not be compelled to take the title, with compensation as to the lands prejudicially affected, which admeasured about four acres and a-half. *Shackleton v. Sutcliffe*, 1 De G. & S. 609.

See *Merger*.

TRUSTEE.

See *Mortgage*.

UNCERTAINTY OF BOUNDARY.

Freehold and leasehold.—A purchaser of lands under the description of "partly freehold and partly leasehold," is entitled to have the boundary dividing the freehold from the leasehold defined by reference to the instruments of title, or shown to be capable of being so defined; but the circumstance that the property is described in the agreement as partly freehold and partly leasehold, the boundaries distinguishing the one from the other not being therein, and having not therefore been clearly defined, is not an objection to a decree for specific performance.

The uncertainty in the boundary or extent of property, which arises, not from an instrument being incapable of legal construction, but from its not having theretofore received any such legal construction, is not a ground for refusing specific performance of a contract to sell such property.

If the boundary of property contracted to be purchased can be certainly defined, whether the extent be more or less, the purchaser will be bound by the contract; but whether he will be so bound if the boundary depends on a plan or instrument which is so vague as not to admit of legal construction, *quære*. *Monro v. Taylor*, 8 Hare, 51.

UNCERTAINTY.

Suit to enforce agreement between railway companies.—*Injunction*.—In the case of an agreement between railway companies, the terms of which, it was contended, were uncertain in themselves and of doubtful legality, the Court gave the parties seeking to enforce the agreement an opportunity of trying these questions at law, and refused to restrain in the meantime an alleged violation, an injunction

not being required for the protection of the plaintiffs against irremediable mischiefs.

An injunction having in this case been granted by the Vice-Chancellor before answer, the defendants having put in their answer, moved before the Lord Chancellor to dissolve the injunction. His lordship granted the application, but refused to make any stipulation as to costs. *Shrewsbury and Birmingham Railway Company v. London and North Western Railway Company*, 3 M'N. & G. 70.

VENDOR AND PURCHASER.

1. *Payment of purchase-money into Court before acceptance of title*.—Notwithstanding the general rule, the Court may, under special circumstances, permit a purchaser to pay his purchase-money into Court before he has accepted the title; but in such case express provision must be made against his taking possession until he shall have accepted the title. *Dempsey v. Dempsey*, 1 De G. & S. 691; *Morris v. Bull*, ib. 691 n.

2. *Payment of purchase-money into Court without acceptance of title*.—*Held*, that a purchaser under a decree could not be permitted to pay his purchase-money into Court without accepting the title, although all parties consented, and although the conditions provided, that, if from any cause whatever the money should not be paid by a particular day, the purchaser making default should pay interest from that day.

Held, also, that the above condition did not render the purchaser liable to pay interest, where he had given notice (as was the fact) that his money was lying unproductive, and the delay arose from the state of the title. *Dennis v. Henderson*, 1 De G. & S. 689.

3. It is the rule of the Court, on a special case being made out, to receive from a purchaser his purchase-money, without compelling him to accept the title. *De Visser v. De Visser*, 1 M'N. & G. 344.

Cases cited: *Hindle v. Dakins*, 1 C. P. Coop. Rep. temp. Cot. 378; *Dempsey v. Dempsey*, 1 De G. & S. 691; *Morris v. Bull*, 1 De G. & S. 691 n.

4. *Railway shares*.—A vendor by public auction of shares in a railway company, incorporated by act of parliament, at the request of the purchaser, (who had paid his purchase-money,) executed a transfer to a third party, who did not accept the transfer, or register himself as a shareholder. On a bill filed by the vendor against the purchaser for a specific performance, the Court directed the usual reference as to title. *Shaw v. Fisher*, 2 De G. & S. 11.

WAIVER OF CONTRACT.

Suggestions by vendor or purchaser to obviate difficulties.—Suggestions made by a vendor or purchaser as to the course which might be adopted for the purpose of obviating difficulties in the completion of a contract, are not to be taken as an abandonment of the original contract, and the substitution of a new one. *Monro v. Taylor*, 8 Hare, 61.

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CHANCERY REFORM.

EXAMINING WITNESSES *VIVÀ VOCE*.

It may be stated, we think, as almost universally the opinion of both branches of the Profession, that the present course of proceeding in examining witnesses in the Court of Chancery is highly objectionable and unsatisfactory, and that *vivà voce* examination should be substituted for written interrogatories. It seems obviously to follow that such *vivà voce* examination must be conducted by the counsel or solicitors of the parties, and it will be the province of the examining officer to determine the fitness of the questions, namely, whether they are pertinent to the issue and properly propounded.

Instead of the present secret examination, where the examiner is restricted to the written question, and is alone with the witness, if the proposed change be effected, the opposite party, his counsel and solicitor will of course be entitled to attend the examination in chief and cross-examine the witness in the same manner as on a trial at Common Law.

It has been objected that this open examination on both sides will sometimes lead to an almost interminable production of witnesses, and be followed by great temptation to perjury. It is conjectured that the statements made on one side, it will be attempted to contradict on the other, and that an unscrupulous litigant may occasion longer delay and more expense than occur under the present practice. It is urged also, that this objection does not apply to the examination of witnesses at Common Law Trials, because in cases where conflicting testimony is expected, the respective witnesses are excluded from the Court, and the question is decided at one hearing with-

out an opportunity of concerting fraudulent evidence.

But to this objection, it may be answered, that even on trials at law, where either party is taken by surprise, a new trial is granted, and then arises the same danger of adducing false evidence. And after all that this argument is worth, it merely amounts to that which is constantly taking place both in Courts of Law and Equity where the evidence is given in the form of *affidavits*. Then each party knows his adversary's case, whether supported by his own deposition or that of others, and in many cases both parties are allowed to file affidavits by way of reply or rejoinder. So that the Court has ultimately to weigh the credibility of the witnesses and determine the value of their testimony.

It has been much under consideration, whether the Court itself should hear the witnesses, but in a large class of cases this cannot be necessary, and in others it would be impracticable. Much of the evidence in Chancery is indisputable and a cross examination would be useless; whilst in some contested causes, a personal examination of all the witnesses would be well-nigh as long as the trial of Warren Hastings. The witnesses should be examined out of Court, but with power to the judge (in order to save the expense of an issue at law) to direct an examination of such witnesses as he deemed necessary in his own presence.

It is essential, however, to bear in mind that a large proportion, if not the majority, of Chancery suits may be *safely decided upon affidavits and documentary evidence*, without any oral testimony whatever.

It should therefore be at the option of the suitors, in the first instance, to support their respective cases by affidavits of themselves and their witnesses,—leaving either party to apply to the Court or a Judge

at Chambers, (if Sittings at Chambers be adopted,) and the Court or judge will decide whether any and what examination should take place *vidé voce*. It may be presumed that many facts will be admitted on both sides, and it will be the province of the judge to limit the extent of the examination, either as to particular witnesses or particular facts, to meet the justice of the case.

In taking evidence in the first instance by way of affidavit, (if no personal examination should afterwards take place,) a large amount of expense will be saved. And even where an examination is subsequently allowed, the expense will be less than at present, because it will be limited to certain points. But where there is a general examination of witnesses upon all matters in question in a strongly contested suit, the costs cannot be less, and may be more, than under the existing practice. In important litigated causes, there will be briefs to counsel to examine or cross-examine the witnesses, the inquiry may continue a long time, numerous persons may be kept in daily attendance, and the evidence taken down verbatim by a short-hand writer may be very voluminous. The briefs of evidence so taken for the hearing of the cause may be enormous and the fees of proportionate amount. These expenses are unavoidable, if it be intended to administer *strict justice* to all parties, and not, (as in petty cases before a magistrate, or an Inferior Court,) to get rid of the difficulty and expense by a hasty and rough *guess* at the rights of the claimants.

It is next to be considered, on the supposition that the witnesses are to be examined out of Court,—*who* shall be the examiners? It seems clear that the present two examiners will not be competent to discharge all the duties of the office. There must either be an increased number, or other officers must be called in aid. It has been suggested that the Commissioners in Bankruptcy, both in town and country, would be eligible for this duty. Another suggestion is, that Special Commissioners—either barristers or solicitors—might be nominated by the suitors, who would be able at once to proceed on the examination, and thereby any delay arising from the pressure of business in the office of the public examiner would be avoided.

It has been asked whether, if the judge should have power to direct the oral examination of witnesses before him, such power should be exercised at his sole discretion, or

whether the parties should be entitled to demand such examination as a right. We think that if both parties require the oral examination, it should of course be granted; but if either party should object to the examination as unnecessary, the Judge should have the power of refusal, because otherwise a useless expense may be incurred at the instance of an obstinate or unreasonable litigant; but against such decision there ought to be an appeal, subject to the peril of costs.

There is a considerable number of suits in which conflicting evidence may be expected, and where the Judge may have some doubt on which side the truth preponderates. For instance, in cases of disputed legitimacy, insanity, and fraud, and on questions arising on letters patent, and other subjects on which issues at law are frequently directed. In these suits the Judge should clearly be at liberty to call for an oral examination in lieu of the expense and delay of a trial, whether the parties require it or not.

Great injustice is often inflicted on a plaintiff in an action at law by withholding him for want of some evidence which he could adduce, or compelling him to withdraw the record on account of the absence of a material witness. Now, in Chancery, on the hearing of a cause, if the Court entertained a doubt on the evidence, which might be removed at a future time, or by the personal examination of any of the witnesses, it would be manifestly just that the cause should be *adjourned*, on such terms as to costs or otherwise, as might be deemed proper towards the other party.

Again, another most material amendment will be that the oral examination of witnesses should not be confined to the hearing of a cause, or the preparation for such hearing; but extend so *interlocutory applications* and to *claims and petitions*, with the advantage of compelling an unwilling person to come forward and depose to the facts within his knowledge, and which at present can only be obtained in a regular suit by bill or information.

A further question of no small importance is—whether on an appeal, the Lord Chancellor or the Lords Justices should be empowered to examine the witnesses *vide voce*? Now, the appeal being made not on the law only, but the facts of the case, it is urged that the Court of Appeal ought to be so empowered. It may be assumed that such oral examination will take place only in cases where there has been some *adversary*

is ~~dismissing~~ the truth, which would probably be supplied by a re-examination. If this be not allowed, a decree or order may be set aside on the ground of insufficient evidence, which a further examination would supply. An appeal should extend to the whole merits of the case, both pleadings and evidence,¹ both law and fact, and put an end to all further litigation. It is deeply to be lamented, for it has often brought the Law of England into disesteem, that the so-called *final* decision in the highest tribunal of the nation, has not unfrequently depended on technical rules, and left the justice of the case unsatisfied.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

ADMINISTRATION OF JUSTICE IN CHANCERY.—LORDS JUSTICES OF APPEAL, &c.

14. & 15. VICT. c. 83.

Power to her Majesty to appoint two persons to be judges of the Court of Appeal in Chancery; s. 1.

Power to appoint secretary, usher, and treasurer for each judge; s. 2.

Precedence of Judges of Court of Appeal; s. 3.

Oath of the Judges of Court of Appeal; s. 4.

Court of Appeal to have the jurisdiction now exercised by the Lord Chancellor; s. 5.

Statutory Jurisdiction now exercised by the Lord Chancellor as a judge in Chancery may be exercised by the Court of Appeal; s. 6.

Jurisdiction of Vice-Chancellor in Bankruptcy transferred to the Court of Appeal; s. 7.

Common Law Judges may sit on request of Lord Chancellor; s. 8.

Decision of majority to be binding; if Court equally divided the decree, &c., appealed from, to be affirmed; s. 9.

Decrees, &c., of the said Court of Appeal may be appealed from, to the House of Lords; s. 10.

One judge appointed under this act sitting with the Lord Chancellor, or both judges sitting apart from him, to form the Court of Appeal. Lord Chancellor sitting alone to have co-ordinate jurisdiction with the Court of Appeal; s. 11.

¹ Was not Lord Lyndhurst's decision in *Small v. Atwood* over-ruled on appeal, chiefly on account of an inconsistency between the pleadings and evidence, and not on the merits of the case at the time of the hearing?

Lord Chancellor to regulate sittings and business of Court of Appeal; s. 12.

Saving of the ministerial and certain other powers of the Lord Chancellor; s. 13.

One of the judges of the Court of Appeal may sit for the Master of the Rolls or Vice-Chancellor during his temporary absence; s. 14.

Judges of Court of Appeal, if Privy Councillors, to be of the Judicial Committee; 15.

No matter to be heard, &c., by Judicial Committee unless three members are present, exclusive of Lord President; s. 16.

Provision as to Lord Chancellor's salary. 2 & 3 W. 4, c. 122; s. 17.

Salary of the Master of the Rolls reduced to 6,000*l.* 7 W. 4 and 1 Vict. c. 46; s. 18.

Salary of 6,000*l.* to be paid to each of the judges of the Court of Appeal appointed under this act out of the interest and dividends arising from the Suitors' Fund; s. 19.

Power to her Majesty to grant an annuity to each of such judges on his resignation; s. 20.

Lord Chancellor empowered, if he think it necessary, to appoint an additional registrar; 21.

Salary of such registrar to be paid out of Suitors' Fee Fund; s. 22.

Additional salary to the Eleventh Clerk to the registrars; s. 23.

Interpretation of Term "Lord Chancellor;" s. 24.

The clauses of the act are as follow:—

An Act to improve the Administration of Justice in the Court of Chancery and in the Judicial Committee of the Privy Council. [7th August, 1831.]

Whereas it is expedient that further provision should be made for the administration of justice in the High Court of Chancery and in the Judicial Committee of the Privy Council; Be it therefore enacted as follows:—

1. It shall be lawful for her Majesty, from time to time, by letters patent under the Great Seal of the United Kingdom, to appoint two persons, being or having been respectively barristers-at-law of 15 years standing, to be judges of the Court of Appeal in Chancery, and every judge so appointed shall hold his office during good behaviour; provided always, that it shall be lawful for her Majesty to remove any such judge from his office upon an address of both Houses of Parliament; and the Lord Chancellor, together with such two judges, for the time being appointed as aforesaid, shall form the Court of Appeal in Chancery.

2. It shall be lawful for her Majesty, in and by such letters patent as aforesaid, or by any other letters patent under the Great Seal of the United Kingdom, to direct that each of the

judges to be appointed in pursuance of this act shall have a secretary, usher, and train-bearer, to be from time to time appointed and removed by such judge at his pleasure; and the secretaries, registrars, and other officers appointed to attend the Lord Chancellor shall attend the said Court of Appeal and the respective judges thereof as circumstances shall require, and the Lord Chancellor shall direct.

3. The said judges shall by styled *Lords Justices of the Court of Appeal in Chancery*, and shall have rank and precedence next after the Lord Chief Baron of the Court of Exchequer, and as between themselves shall have rank and precedence according to the order and time of their appointment.

4. Every judge so appointed shall, previous to his executing any of the duties of his office, take the following oath, which the Lord Chancellor or the Master of the Rolls for the time being is hereby respectively authorized and required to administer:—

“I do solemnly and sincerely promise and swear, That I will duly and faithfully, and to the best of my skill and power, execute the office of Lord Justice of the Court of Appeal in Chancery. So help me God.”

5. From and after the 1st day of October, 1851, all the jurisdiction of the High Court of Chancery in England which is now possessed and exercised by the Lord Chancellor in the said Court of Chancery, and all powers, authorities, and duties, as well ministerial as judicial, incident to such jurisdiction, now exercised and performed by the Lord Chancellor, shall and may be had, exercised, and performed by the said Court of Appeal.

6. Where under any act of parliament any jurisdiction is vested in the Lord Chancellor, or any power, authority, or duty is to be exercised or performed by the Lord Chancellor, and under the directions of any act or by the usage in this behalf such power, authority, or duty is or ought to be exercised or performed by the Lord Chancellor acting judicially in the said Court of Chancery, all such jurisdiction, power, authority, and duty, and the ministerial powers and authorities incident thereto or consequent thereupon, which are now exercised and performed by the Lord Chancellor, shall from and after the said 1st day of October, 1851, be had, exercised, and performed by the said Court of Appeal.

7. From and after the 1st day of October, 1851, all the powers, authorities, and jurisdiction, original and appellate, given and granted to the Vice-Chancellors of the said Court of Chancery, or any of them, under the Bankrupt Law Consolidation Act made and passed in 1849, or otherwise had, possessed, or exercised by the said Vice-Chancellors, or any of them, in matters of bankruptcy, shall be granted to, vested in, exercised, and possessed by the said Court of Appeal; and all the provisions of the said act in relation to such appeals to such Vice-Chancellor shall be construed accordingly: Provided always, that there shall not be any appeal from the decision of the said

Court of Appeal to the Lord Chancellor, anything in the said Bankrupt Law Consolidation Act to the contrary notwithstanding.

8. It shall be lawful to the said Court of Appeal and the Master of the Rolls, and the Vice-Chancellors, and for each of the said jurisdictions, to sit, with the assistance of any judge of either of her Majesty's Courts of Common Law at Westminster, upon the request of the Lord Chancellor, if any such Common Law Judge shall find it convenient to attend upon such request.

9. The decision of the majority of the judges of the Court of Appeal shall be taken and deemed to be the decision of the said Court; and if the judges of the Court be equally divided in opinion on any cause or matter brought before the Court by way of appeal, the decree or order appealed from shall be taken and deemed to be affirmed by the Court of Appeal.

10. All decisions, decrees, or orders of the Court of Appeal, including decisions in matters of bankruptcy, shall be subject to appeal to the House of Lords in the cases and under the conditions in and under which the like decisions, decrees, or orders of the Lord Chancellor would have been subject to such appeal if this act had not been passed; but the appeal to the House of Lords in matters of bankruptcy shall be only on matters of Law or Equity, or on the rejection or admission of evidence, and on a special case to be approved and certified by one of the judges of the Court of Appeal hereby constituted, whose determination on the settlement of such case shall be final and conclusive.

11. All the jurisdiction, powers, and authorities of the said Court of Appeal may be exercised either by one only of the judges for the time being appointed under this act and the Lord Chancellor sitting together as such Court of Appeal, or by both of the judges so appointed sitting as such Court apart from the Lord Chancellor, either in his absence from the said Court of Chancery, or during the same time as he is sitting in such Court: Provided always, that the Lord Chancellor shall and may also while sitting alone or apart from such two judges have and exercise the like jurisdiction, powers, and authorities, as well as all such other jurisdiction, powers, and authorities as might have been exercised by the Lord Chancellor if this act had not been passed.

12. The Lord Chancellor shall fix the times at which the two judges of the said Court of Appeal appointed under this act, or either of them, shall sit with the Lord Chancellor, and at which such two judges shall sit apart from him as such Court of Appeal, and also what appeals and matters now usually heard and determined by the Lord Chancellor, and hereby made subject to the jurisdiction of the said Court of Appeal, shall be heard and determined by such Court when the Lord Chancellor is sitting with the said judges to be appointed under this act or one of them, and by such judges when sitting apart from such Lord Chancellor, and by such Lord Chancellor when sitting alone, respectively, and generally may

makes such regulations as to him may seem proper for dividing and regulating the business of the said Court of Appeal, and for the attendance of a registrar of the said Court of Chancery at the sittings of the said Court of Appeal.

13. Nothing herein contained shall affect any of the powers, duties, or authorities attached to the office of Lord Chancellor, or exercised by the Lord Chancellor as keeper of the Great Seal, except the powers, authorities, and duties which are exercised and performed by him acting as a judge in the said Court of Chancery, either by virtue of his ordinary jurisdiction or of any statute, and the ministerial powers and authorities incident thereto respectively, or affect the powers, authorities, and duties of the Lord Chancellor, under and by virtue of any appointment under the sign manual of the Crown, as having the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, or in relation to letters patent, grants, or writings passed or to be passed under the Great Seal of the United Kingdom, or the revocation of such letters patent, grants, or writings, or the powers and authorities of the Lord Chancellor in right or on behalf of her Majesty as visitor of any charity or other foundation, or the powers of the Lord Chancellor of appointment to or removal from or otherwise in relation to offices in the Court of Chancery, or other offices, save as herein specially provided, or the powers of the Lord Chancellor to direct and regulate the sittings and duties of the Vice-Chancellors, or any powers of the Lord Chancellor (whether to be exercised by the Lord Chancellor alone, or with the concurrence or advice or consent of the Master of the Rolls and the Vice-Chancellors, or otherwise,) to make rules or orders for regulating the practice, proceedings, and business of the Court of Chancery, or the business or duties of any of the offices or officers of such Court; and in all cases where the concurrence, advice, or consent of the Master of the Rolls and of one of the Vice-Chancellors, or of either of them, shall be requisite for the making of such rules or orders, the concurrence, advice, or consent of one of the judges appointed by virtue of this act may be substituted for that of the Master of the Rolls or of such Vice-Chancellor.

14. In case the Master of the Rolls or any Vice-Chancellor of the High Court of Chancery shall be prevented by illness or otherwise from sitting at any time when according to ordinary course his Court would be open, the Lord Chancellor may, by writing under his hand, from time to time, so often as occasion may require, authorize one of the judges of the said Court of Appeal to sit for the hearing and determining of causes and matters in lieu of the Master of the Rolls or such Vice-Chancellor, and the judge sitting under such authority as aforesaid may, for the purpose of disposing of any cause or matter which has been partly heard by him, continue such his sittings, notwithstanding the Master of the Rolls or

Vice-Chancellor in whose stead he has partly heard such cause or matter may also be sitting for the hearing of other causes or matters; and all decrees and orders made by such judge in pursuance of such authority shall be of the same effect and validity and subject to revision and appeal, in the same manner in all respects as if made by the Master of the Rolls or Vice-Chancellor, as the case may be: Provided always, that such judge shall not sit as a judge of the said Court of Appeal upon any appeal from any decree or order made by himself.

15. Every person holding or who has held the office of a judge of the Court of Appeal in Chancery shall, if a member of her Majesty's Privy Council, be a member of the Judicial Committee of the Privy Council.

16. So much of the act of the session holden in the 3 & 4 W. 4, c. 41, as provides that no matter shall be heard, nor shall any order, report, or recommendation be made, by the Judicial Committee of the Privy Council, in pursuance of that act, unless in the presence of at least four members of the said Committee, shall be repealed; and no matter shall be heard, nor shall any order, report, or recommendation be made, by the said Judicial Committee, in pursuance of the said act or any other act, unless in the presence of at least three members of the said Committee, exclusive of the Lord President of her Majesty's Privy Council for the time being.

17. From and after the 11th day of October, 1851, the salary of the Lord Chancellor shall be the net yearly sum of 10,000*l.*; and there shall be deducted from the yearly sum payable to the Lord Chancellor under the act of the session holden in the 2 & 3 W. 4, c. 122, the amount of any salary or sum which for the time being may be payable to the Lord Chancellor as Speaker of the House of Lords, so that such yearly sum only shall be paid by the Governor and Company of the Bank of England, to the Lord Chancellor, under and according to the provisions of the said act, as with the salary or sum certified (as hereinafter mentioned) to be payable to the Lord Chancellor as such Speaker, shall be sufficient to make up the net yearly sum of 10,000*l.*; and the clerk assistant of the parliaments shall on or before the 11th day of October, 1851, and from time to time, so often as the salary or sum payable to the Lord Chancellor as such Speaker is altered, certify in writing under the hand of such clerk assistant, to the said governor and company, the amount of the salary or sum for the time being payable to the Lord Chancellor as such speaker.

18. From and after the 11th day of October, 1851, in lieu of the salary payable to the Master of the Rolls under the act of the Session holden in the 7 W. 4 and the 1 Vict. c. 46, there shall be paid, for the salary of the Master of the Rolls for the time being, out of the fund, on the days, and according to the provisions mentioned and contained in the said act, the annual sum of 6,000*l.*, free and clear from all taxes and deductions.

19. Out of the interest and dividends that have arisen or may hereafter arise from the government or parliamentary securities now or hereafter to be placed in the name of the Accountant-General of the Court of Chancery to the two accounts, intituled "Account of Monies placed out for the Benefit and better Security of the Suitors of the High Court of Chancery," and "Account of Securities purchased with surplus Interest arising from Securities carried to an Account of Monies placed out for the Benefit and further Security of the Suitors of the High Court of Chancery," or either of them, there shall be paid (but subject and without prejudice to the payment of all salaries or sums of money by any former act or acts now in force directed or authorized to be paid thereout,) by the Governor and Company of the Bank of England, by virtue of any order or orders of the Lord Chancellor to be made from time to time for that purpose, without any draft from the Accountant-General, the net yearly salary of 6,000*l.* to each of the judges of the said Court of Appeal for the time being appointed under this act, the net yearly salary of 400*l.* to his secretary, the net yearly salary of 250*l.* to his usher, the net yearly salary of 100*l.* to his trainbearer; and also a sum of 40*l.* per annum to each of the persons appointed or to be appointed under the act of the session holden in the 50 Geo. 3, c. 164, and under the act of the session holden in the 5 Vict. c. 5, to keep order in the Courts therein mentioned, and in addition to the salary of 40*l.* thereby provided; all such payments to be made respectively on the days and according to the provisions as to proportionate parts thereof respectively and otherwise mentioned and contained in the said last-mentioned act in relation to the salaries of the Vice-Chancellors and officers appointed under such act.

20. It shall be lawful for her Majesty, by letters patent under the Great Seal of the United Kingdom, to grant to any person appointed to and executing the office of a judge of the said Court of Appeal in pursuance of this act, an annuity not exceeding 3,750*l.*, to commence and take effect immediately after the period when the person to whom such annuity is granted resigns his office, and to continue from thenceforth during the natural life of such person; and such annuity shall be issued and payable out of and charged upon the Consolidated Fund of the United Kingdom, after paying or reserving sufficient to pay all such sums of money as by any acts of parliament now in force have been directed to be paid thereout, but with precedence to all other payments which shall hereafter be charged thereupon; and such annuity shall be paid on the days and according to the provisions mentioned and contained in the said act of the 5 Vict., in relation to the annuities granted on resignation of office to the Vice-Chancellors appointed under that act: Provided always, that it shall be lawful for her Majesty to limit the duration of such annuity or any part thereof to such periods of time during the natural

life of such person as he shall not exercise any office of profit under her Majesty, so that such annuity, together with the profits of such office, shall together not exceed the said sum of 3,750*l.*: Provided also, that no annuity granted to any person having executed the said office of a judge of the said Court of Appeal shall be valid unless such person have held such office for the period of 15 years, or have held such office, and any of the offices of Master of the Rolls, Vice-Chancellor, or judge of one of her Majesty's Superior Courts of Common Law at Westminster, for periods amounting together to 15 years, or be affected with some permanent infirmity disabling him from the due execution of his office, which shall be distinctly recited in the said grant.

21. It shall be lawful for the Lord Chancellor (in case it shall hereafter appear to be necessary) by writing under his hand to appoint one additional registrar of the Court of Chancery, and from time to time to fill up any vacancy in the said office; and the person to be appointed such additional registrar shall be the senior of the clerks to the registrars of the said Court for the time being, to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made; and such additional registrar shall rank next after the junior of the registrars for the time being appointed under the act of the 5 Vict. c. 5, and shall personally do and perform all the duties and have and enjoy all the rights and privileges belonging to the office of registrar, and shall be subject to the several provisions and penalties contained in the said act relating to the registrars of the said Court, and be entitled, in case of permanent infirmity or after continuance in office for 40 years, to the like annuity as if he had been appointed registrar in and by the said act: Provided always, that the acceptance of the office of additional registrar by such senior clerk for the time being shall be without prejudice to all his rights of succession to the office of registrar under the said act.

22. Out of the fund placed to the credit of the Accountant-General of the said Court, intituled "The Suitors' Fee Fund Account," or the other funds charged with and made liable for the payment of the salaries of the present registrars, there shall be paid to such additional registrar from the date of his appointment the salary or net yearly sum of 1,250*l.*, and also, so long as he shall be liable for the expenses of writing and copying the decrees and orders, and the minutes of the decrees and orders of the said Court, the yearly sum of 100*l.*, on the days and in the manner provided by the said act of the 5 Vict. c. 5, with respect to the payment of the salaries of the present registrars.

23. In the event of the appointment of such additional registrar there shall be paid to the eleventh clerk to the registrars for the time being, from the date of such appointment, out of the said fund, intituled "The Suitors' Fee Fund," or such other funds as aforesaid, the

same salary or yearly sum, and on the same days and in the same manner as by the said act of the 5 Vict. c. 5, is appointed and directed to be paid to the seventh, eighth, ninth, and tenth clerks to the registrars.

24. In the construction of this act, unless such meaning be repugnant to or inconsistent with the context, the expression "Lord Chancellor" shall mean and include the Lord High Chancellor of Great Britain, and the Lord Keeper or Lords Commissioners of the Great Seal of the United Kingdom, for the time being.

MEMOIR OF THE LATE LORD CHANCELLOR COTTENHAM.

CHARLES CHRISTOPHER LORD COTTENHAM was the second son of Sir William Weller Pepys, Baronet, one of the Masters of the Court of Chancery, and his mother was a daughter of the Right Honourable William Dowdeswell. Mr. Pepys was born on the 20th April, 1781. He studied at Trinity College, Cambridge, and received the degree of Bachelor of Laws in 1803, but did not attain, and probably did not seek any other honour. It appears that in the same year Mr. Baron Parke and Mr. Justice Coltman, Members of the same College, distinguished themselves as Wranglers. Mr. Pepys became a Member of the Hon. Society of Lincoln's Inn on the 26th January, 1801. He was for some time a pupil of Mr. Todd and also of Sir Samuel Romilly, and was called to the Bar on the 23rd November, 1804. Mr. Pepys practised at the Equity Bar with considerable success, and was esteemed a skilful draughtsman. Whilst a junior, he was much employed by a well-known solicitor (now deceased) in Southampton buildings, a man in large practice, and who in behalf of his clients resorted on some occasions to bold and somewhat objectionable experiments. On one occasion, a bill had been prepared, (probably by the solicitor himself,) which was complained of as grossly scandalous and impertinent, and the case came before Lord Eldon, who inquired the name of the learned counsel by whom it had been signed. Being told that Mr. Pepys was the counsel, and that he had relied on the solicitor who instructed him, his lordship with some solemnity said, he hoped no such case would again occur.

In order of date, we may mention that Mr. Pepys married the daughter of William Wingfield, Esq., one of the Masters in Chancery, on the 30th June, 1821; and in Michaelmas

Term, 1826, he attained the rank of King's Counsel, and was elected a Bencher of Lincoln's Inn. His next promotion was that of Solicitor-General to Queen Adelaide, in 1830.

In July, 1831, he was returned to parliament as Member for Higham Ferrars, from which representation he withdrew, and in the following October was elected for Malton, and in 1832, and again in 1835, was re-elected for that borough.

It does not appear that he took any prominent part in political debates, but very constantly supported the great Whig party to which he belonged. His influence with the ministry and his professional merits raised him to the rank of Solicitor-General in February, 1834; he then received the honour of knighthood, and soon afterwards, namely, in the month of September in that year, on the retirement of Sir John Leach, he was further promoted to the dignified and ancient office of Master of the Rolls.

On the retirement of Lord Chancellor Lyndhurst, in April, 1835, Sir Charles Pepys was nominated one of the Commissioners of the Great Seal, with the Vice-Chancellor of England, Sir L. Shadwell, and Mr. Justice Bosanquet; and on the 16 Jan. 1836, he was appointed Lord Chancellor, and raised to the peerage. He continued in that high office until September, 1841, when Lord Lyndhurst again returned to the Woolsack under Sir Robert Peel's administration. In August, 1846, Lord Cottenham again became Chancellor, and continued to hold office till his final retirement, in June, 1850. During part of the years 1849 and 1850, his Lordship was afflicted with severe illness, and unable to sit in Court. On his resignation, the Seals were entrusted to Lord Langdale, Vice-Chancellor Shadwell, and Mr. Baron Rolfe, as Lords Commissioners, until the appointment of Lord Truro, in July, 1850.

Before proceeding to make some remarks on the judicial career of Lord Cottenham, we have to notice his Lordship's departure for the Continent, where it was hoped his Lordship's valuable life might have been prolonged, but the relaxation came too late: his Lordship died at Pietra Santa, in the Duchy of Lucca, on the 29th April, 1851, and his eldest son, Lord Crowhurst, succeeded to the title.

The name of Pepys is well known in literary as well as legal annals, and the late Lord Chancellor greatly advanced the rank of the family; although he held the Seals for a few years only

he attained an earldom in 1850. This somewhat rapid step in the peerage naturally excited some comments, for thereby several of the rank of barons were passed over whose longer standing and great public services might have claimed an equal distinction. Amongst these were Lord Lyndhurst, who had been thrice Lord Chancellor, and Lord Brougham, who, besides having filled the office of Lord Chancellor, had contributed in a greater degree than any other peer to the advancement of many great and most valuable national objects and important improvements. To these pre-eminent instances may be added the name of Lord Denman, so long the respected Chief Justice of our highest Court of Common Law, and Lord Campbell, late Lord Chancellor of Ireland, and now the successor of Lord Denman. Several peers of ancient standing might also be mentioned, who, though not on the judicial bench, have rendered good service to the state. It must be acknowledged, however, that Lord Cottenham had very high claims upon his colleagues in the Whig ministry. It has always been said, that from the moment he received the Great Seal he devoted his patronage, lay and ecclesiastical, judicial and political, to the interests of his party, rarely yielding to private influence or personal friendship.

Turning now to the consideration of the judicial character of the deceased, it may be observed that we have had several examples of eminently able advocates who, when raised to the Bench, have failed to obtain there an equal measure of success and public esteem. The highest qualities of the judge and the advocate are rare even in their separate excellence, and a combination of them has scarcely ever been witnessed. The most conspicuous examples of that singular combination of law and eloquence—of judicial and forensic power—are shown in Lord Lyndhurst and Lord Truro. Even Lord Abinger, who stood in the very first rank of successful advocates, and exhibited his usual acuteness as a Judge at *sisi prius*, was not pre-eminent on the Bench of Westminster Hall. Lord Tenterden was altogether undistinguished as an advocate, but was peculiarly eminent as a judge both *in banc* and *sisi prius*. On the other hand, Lord Wynford excelled amidst the contentions of the Bar, but however quickly he seized the points placed before him and fluently handled them, took no high standing as a lawyer.

Of Lord Cottenham it may be said, that as an advocate he was clear, concise, and accurate in his statement of a case, strictly logical in his deductions, and addressing himself to the mind of a single judge, his unadorned and unimpassioned argument did ample justice to the case of his client. He did not, like some quick and voluble speakers, depend on "picking up" his materials by a hasty glance at the papers, or from his junior at a consultation, or during the hearing of a cause, but carefully read and considered his brief, not disdaining, (as some conceited men have done,) to peruse the remarks of the solicitor and often to avail himself of them.

As a Judge, Lord Cottenham possessed very high qualifications. He was master both of the principles of that system of equity which he had to administer and the practice of the Court, by which he was guided. He was impartial to, and independent of, the Bar. No advocate ever came before him of higher attainments than he was himself conscious of possessing. He could not be misled by bold assertion or fallacious argument. He carefully made himself acquainted with the facts of the case, well considered the equitable merits and decided accordingly. His only fault, (though many will deem it an excellence,) was to form his judgment too strictly upon technical grounds, often arising out of the pleadings, with the rules of which he was as acute and skilful as the best of our special pleaders.

Several alterations and some amendments in the law were effected during the Chancellorship of Lord Cottenham. The most conspicuous and beneficial improvement which he effected in the Court of Chancery was, the institution of Suits by a short form of *Claims* in numerous cases, where formerly elaborate Bills, with their lengthy statements, charges and interrogatories, could alone be resorted to. He also concurred in the expediency of Sir G. Turner's useful act, authorising special cases for the opinion of the Court, and enabling executors to administer the assets in their hands by a summary course of proceeding. The Trustees Act introduced by Mr. Headlam, also received his sanction, and effected several judicious and economical improvements in the Law and Practice of the Court. The Joint-Stock Companies' Winding-up Acts, and the Lands Clauses' Consolidation Acts also passed during his Chancellorship. So far he was a beneficial reformer in our system of equity...

In the Common Law department, with which he was imperfectly acquainted, his merits are less meritorious. The principal alteration in that branch of the law was, the *Small Debts* or County Court Act, which he strenuously supported. The patronage conferred by this statute doubtlessly constituted a tempting object. Gifts of 60 judgeships, with treasurers, clerks, and assistants, could not fail materially to extend and strengthen the influence of Government. We have already admitted that a general measure of local jurisdiction to a limited amount was advisable, but this measure went too far, and whilst it professed to establish merely *small Debt Courts*, it unwisely confined the selection of Judges to the Bar, and naturally excited the ambition not only of all who were fortunate enough to obtain the appointments, but of the innumerable body of future expectants.

When pressed by the Incorporated Law Society to include attorneys of a certain standing as eligible for the office of judge, Lord Cottenham said in his place in parliament, that though there were some able and learned men amongst that branch of the profession, they were, as a body, not acquainted with the principles of law, and therefore ineligible. This was erroneous both in fact and inference, for the attorneys generally must be acquainted with legal principles: they cannot discharge their duties without such knowledge. The acquisition of it is part and parcel of their education as well as their practice. They read the same books as the Bar. They are examined (which the Bar is not) on principles as well as practice. But supposing a large proportion, or even a majority, of the men on the roll to be deficient in legal education, is not a great part of the Bar equally ignorant? Of the 3,000 barristers, how many are competent to be judges? But we say the inference was fallacious: it was only proposed that such attorneys as were deemed competent should be eligible for the office. The Chancellor who appointed the judges would have selected some of the "able and learned" who he admitted were to be found in that branch of the profession.

Amongst other important subjects of reform, Lord Cottenham also gave a large share of his attention to the Bill for Consolidating and Amending the Law of Bankruptcy, and he effectually withstood what were called "the dead man's clauses" proposed by Lord Brougham, which, if carried, would have removed a large

part of the administration suits from the Court of Chancery to the Bankruptcy Commissioners. He also took much interest in the bills introduced, session after session, for better regulating Charitable Trusts—an improvement which yet remains to be accomplished. On the whole, it may be said that Lord Cottenham was cautious in lending the weight of his authority to the schemes so frequently brought before parliament, and which for the good of the country require the supervision of an experienced and considerate lawyer. It is well that the head of the Profession should thus control the progress of ill-considered legislation.

NOTICES OF NEW BOOKS.

Readings delivered before the Honourable Society of the Middle Temple, in the year 1850. By GEORGE BOWYER, Esq., D.C.L., Barrister-at-Law, late Reader at the Middle Temple, Author of Commentaries on the Constitutional Law of England, Commentaries on the Modern Civil Law, a Dissertation on the Statutes of the Italian Cities, &c. London: V. & R. Stevens and G. S. Norton. 1851. Pp. 198.

Mr. Bowyer, in his preface to this volume, thus explains the purpose of his learned labours and the course he has adopted in executing them:—

"The principal object of these Readings was to show the connection of the branches of Jurisprudence one with another, and their place in the general system of moral science, and, at the same time, to teach leading principles and classifications, important not only to lawyers, but also to all who are concerned in legislation and government. With these things I have combined a good deal of historical matter and legal learning, which is scattered about in various books, some of them not easily obtained nor usually read.

"In the execution of this task, I have been careful to keep in view what is practical, avoiding vague generalities and mere hypothetical theories, and always citing authorities in support of the chief propositions and principles, so as to enable the reader to test what I have said, and pursue his researches further on any point that he may desire to investigate. And I have endeavoured to illustrate and explain our own national law by means of the greatest legal writers of other countries.

"The general heads of the Readings will show that I have taken a sufficiently wide range. And even while treating subjects apparently of a confined nature, such as the Construction of Statutes, I have brought to bear

on them the portions of various branches of jurisprudence scientifically connected with the particular matter in hand.

"The course of Readings concludes with a general view of the whole system of the Canon Law, which did not previously exist in the English language. This subject is important, not only because the Canon Law is the mother of the Queen's Ecclesiastical Law, and to a considerable extent part and parcel of the Law of England—which has also derived therefrom some of her own doctrines,—but also as a great and necessary branch of Universal Jurisprudence. I have been solicitous to treat this subject legally and scientifically, but not theologically, avoiding controversy, and giving, at the same time, a true general idea of the Canon Law considered as a system of rules defining rights and obligations, and containing a peculiar form of exterior Ecclesiastical polity."

The following are the heads of the several readings:—

1. On the uses of the Science of General Jurisprudence and the Classification of Laws.

2. On the uses of the Roman Law and its relation to the Common Law.

3. On Municipal Law and the Construction of Statutes.

4, 5, & 6. On the Construction of Statutes.

7. On the boundaries of the Judicial Power and Legislative Interpretation.

8 & 9. On the Criminal Jurisprudence of the Civilians.

10. On the Reasons of Laws.

11. A Sketch of Public Law and on the nature and origin of Penal Law.

12. On the uses of the Canon Law and its general characteristics.

13. On the Corpus Juris Canonici.

14. A general view of the Canon Law:—
The sources of the Canon Law.
The Law of Persons.

15. The Law of Things.

The Law of Actions.

It will be observed that there is here much to interest both the scientific lawyer and the philosopher. The general reader also will be interested with the Readings on General Jurisprudence and the Classification of Laws, on the Boundaries of Judicial Power, and the Reasons of Laws.

Mr. Bowyer, in his first chapter, thus ably enforces the necessity of enlarging the sphere of legal studies:—

"Some of the most distinguished men of our profession have long felt that the sphere of legal learning in England ought to be enlarged. It is indeed obvious that when other sciences are being augmented with the genius, the industry, the enterprise, the invention, and

the intellectual fertility,—not of one country, but of the whole civilized world,—the science of law must fall below her high dignity if she be confined within the mere bounds of the practical daily necessities of the administration of justice. No human science is more noble, none more deserving of the wisest and most liberal cultivation, without which its professors will hardly preserve their proper rank with regard to those of other sciences. Without this broad cultivation, Municipal Law will become sterile and less able than it ought to be to meet all the exigencies which changes, both social and political, and the progress of mankind must engender.

"This is no doubt a topic of great practical importance in our days, when—partly from the natural course of the human mind, and partly from the great events which have lately agitated and convulsed the larger part of the civilized world—every institution of the country is narrowly scrutinized—every law is critically examined,—and a strong feeling has been awakened that improvement is requisite in many parts of our Municipal Law.

"How are we to meet these exigencies? How are we to defend those laws which ought to be maintained, and usefully reform those which require improvement? The country will not be satisfied with appeals to mere precedent, or the established rules of positive law. We must be ready to give reasons for the law, drawn from sound practical philosophy, convincing to the minds of acute, practical, and judicious men. We must appeal to principles of justice and public utility. And where the law requires amendment, it must be reformed on some broad and sound principles, which can be done only by the light and guidance of the science of jurisprudence. That science is the necessary guide of the legislator in the performance of his duty, because it suggests remedies for defects or omissions of the Municipal Law, and, by presenting a general and coherent system to his mind, enables him to preserve a unity in his work, without which it must be a sort of patchwork and a series of experiments.

"In the administration of justice, by the combined services of the Bench and the Bar, we cannot fail to see the value of a broad cultivation of the science of jurisprudence. Cases frequently occur in our Courts, for the decision of which the precedents and books of authority afford insufficient or no rules. In such cases,—as the judges are always desirous of following the dictates of reason and substantial justice,—it must be a great advantage to an advocate to have at his disposal the vast mine of equitable principles and legal reasoning to be found in the Roman Law and the writings of the jurists. And the science of jurisprudence must be most valuable to a judge, when he finds himself forsaken, or imperfectly assisted, by the guides on whom he is accustomed to rely."

The learned author has bestowed very elaborate research, both in ancient and

modern works, in elucidating the principles he has laid down; the work displays great legal as well as general learning, and is written with much force and clearness.

INCORPORATED LAW SOCIETY.

REPORT OF THE COUNCIL TO THE ANNUAL GENERAL MEETING.

19th June, 1851.

[We submit to our readers the Annual Report of this important Society,—divided into such sections as our space will admit.]

The Council would preface this account of their labours during the past years, by stating that, besides the ordinary Weekly Meetings, they have had many Special Meetings on affairs of considerable urgency; and that upwards of sixty Committee Meetings have been held upon Common Law, Equity, and Conveyancing Matters; on various Bills in Parliament; on Fees and Retainers; on Cases of Malpractice; on the management of the Library, the Finances, and other domestic business of the Society, exclusive of the regular attendance at each of the Lectures by three Members of Council.

Incident to these duties, it has become necessary to prepare numerous reports; to conduct several deputations in support of the measures advocated on the part of the Profession; various petitions to the legislature have been presented; memorials addressed to the law authorities; and an extensive correspondence carried on, not only on the ordinary business of the Society, but also with reference to the important questions above adverted to. The average number of matters on which the Council have given their opinion or direction, has not been less than fifteen at each meeting, comprising several hundred matters on which the judgment of the Council has been exercised in the course of the last twelve months.

It is impracticable to give even the briefest notice of the details of this vast mass of business. The Members will give the Council credit for using their best discretion in deciding on the matters brought before them, with a view as well for the credit of the Society as the general good of the Profession, with which the true interests of the Public are inseparably connected. The Council now proceed to state, as concisely as they can, some of the more prominent subjects which have from time to time come under their consideration.

I. LAW BILLS IN PARLIAMENT.

The Annual General Meeting in 1850 having taken place in the midst of the last Session of Parliament, it is necessary to advert to several measures which were then in progress, and some of which have been resumed in the present Session.

Stamp Duties.—The most important bill then pending was the Stamp Duties Bill. The

last report stated somewhat fully the amendments which had been proposed, and the exertions used for the improvement of that bill. The Council, powerfully aided by several Provincial Law Societies, prepared various clauses, which were submitted to the House of Commons by Mr. Mulinings. The larger part of those amendments were adopted, either wholly or partially; while some were rejected as unfavourable to the revenue, particularly the permission to give deeds in evidence at a trial, though insufficiently stamped, upon payment of a penalty.

Since the last Session it has been found that the Stamp Act thus passed, whilst it afforded some relief in the majority of conveyancing transactions, was still, in many respects, defective; and the Council have ceased the proper representations to be made to the Chancellor of the Exchequer, for the purpose of inducing him to remedy such defects: the following being some of the points referred to:—

Judgments in Ireland charge the real estate of the debtor, and (unlike English judgments) are assignable at Law;—bonds, and warrants of attorney to confess judgments, are given by way of security for loans, instead of mortgages; and transfers of such judgments are made in the same manner as mortgages. Under the new act, such assignments are liable to *ad valorem* duties to the same amount as conveyances. Now there appears no stronger reason for treating assignments of judgments as transactions on the sale of property, than for treating assignments of mortgages as such, and the Council are endeavouring to procure an amendment of this part of the act.

The chief defect in the former act relating to the transfer of mortgages was removed, but into the clause suggested by this Society some words were introduced at the Stamp Office which limited the remedy to the mortgagor, and excluded a purchaser under him. An attempt has been made on the part of the Council to correct this restriction, but the Chancellor of the Exchequer has refused his assent. The evil is of limited application, as it affects only mortgages prior to the last act, and in which a sale has taken place subject to the mortgage.

The authorities at the Stamp office have prescribed certain conditions on which they adjudicate the amount of stamp duties under the powers conferred by the new act. Amongst others, they require an abstract of the instrument to be taken to the Solicitor of Inland Revenue. Now the cost of the abstract will in many instances exceed the value of the stamp in question, and thus deprive the public of the benefit intended by the legislation.

A prejudicial practice was at first adopted in regard to affixing denoting stamps on counterparts or duplicates, the original deeds being required to be produced duly executed, at the time of stamping the counterpart; but this has been remedied. They are not now required to be produced at the same time. The original

deed may be produced at the Stamp Office, and a note will be taken of it, and the counter-part may afterwards be stamped.

Certificate Duty.—The Members are aware of the result of the great exertions which were made last Session for the repeal of the Certificate Duty. At the time of the last Annual Meeting, leave had been given to bring in the bill by a majority of 19 members, in a house of nearly 300; notwithstanding which, the Government divided the House at every future stage of the bill. On the second reading there was a majority of 18; and a majority also on going into Committee; but, after passing through the Committee, on the motion to appoint the third reading, which came on at nearly three in the morning, there was a majority against the bill, of 24.

It is scarcely necessary to add that previous to, and during the present Session, preparations have been made for resuming the measure.

The justice of the claim to the remission of a tax levied on one branch only of one of the three learned professions, was not disputed by the Chancellor of the Exchequer, who had no reason to urge in support of the principle of the tax; but it was urged by him, and on his behalf, that if it were repealed, the licence duties on auctioneers, bankers, brewers, distillers, pawnbrokers, hawkers, pedlars, and some other classes, amounting to upwards of a million a-year, must also be removed. A statement was therefore prepared, showing that nine-tenths of these taxes were mere excise licenses, charged according to the amount of the articles sold, and that the remainder, which were in the nature of a personal tax, scarcely exceeded in the whole what would still be paid by the profession on articles of clerkship, and admissions on the Roll. Letters were forwarded to the Provincial Law Societies, and to solicitors in all the other towns, to be addressed to their respective representatives, and were returned numerously signed. Lord Robert Grosvenor, at the commencement of the Session, gave notice of a motion for leave to bring in the bill; but the resignation of the Ministers, the delay which took place before their return to office, the withdrawal of the first financial plan, the substitution of another, and the time occupied in regard to Papal Aggression and other subjects, have hitherto delayed the bringing on of the motion.

The Members are aware that it was proposed by the bill of last Session to increase the small fee of 1s. 6d. for the Annual Registration of Attorneys. The amount of the fee appeared to be a question solely affecting those who would have to pay it. Immediately after the second reading of the bill, the Council transmitted prints of the bill to every Law Society in England and Wales, with a statement directing especial attention to the intended increased fee, and fully explaining the objects to which it was proposed to apply any surplus which might remain, after defraying the actual ex-

penses of the registration; and not a single objection to it was suggested by any one of those by whom the fee would have been payable; who, doubtless, agreed with the Council in opinion, that the interests of the members of the profession in common, and those of the public, would be benefited by the promotion of the objects to which any such surplus would be applicable.

The existing fee will not nearly suffice to meet the actual and unavoidable expenses of that more complete registration which is contemplated by the bill; but the Council rely with perfect confidence on the liberality of their professional brethren, to supply the deficiency.

County Courts.—The several bills for extending the jurisdiction of the County Courts, not only in pecuniary amount, but as involving Equity and Bankruptcy business, have been frequently under the consideration of the Council and their Committees. They have presented petitions to both Houses of Parliament, in opposition to any departure from the original principle of the measure, which was expressly confined to small debts and demands, not exceeding 20*l.*, in lieu of the Courts which were formerly limited to 2*l.* or 5*l.*, generally undisputed, and requiring only an arrangement of the time of payment. It was represented to parliament, that the extended jurisdiction to difficult and important questions would impair the utility of the Courts in their intended purpose of relief to the poorer class of suitors; that in contested questions, the recourse to professional aid was essential to uniformity of decision; that in the Superior Courts the expense of a trial was avoided in 98 cases out of every 100, and thus the personal attendance and loss of time of the parties were saved; that in litigated cases the expense of hearing interlocutory matters, during the circuits of the County Court, would be more expensive than in the metropolis; that much of the expense in the County Courts is thrown on the successful, instead of the losing, party; and that if the payment of fees in the Superior Courts were reduced, and proper alterations made in the procedure, actions might, with very few exceptions, be conducted there as cheaply as in the Inferior Courts. The Council especially opposed the clause by which exclusive jurisdiction would in effect have been given to the County Courts, by the forfeiture of the plaintiff's costs, in sums under 50*l.* This part of the bill was altered; but the construction subsequently put on the clause leaves the law in a very uncertain and unsatisfactory state. The Council have also taken such steps as appeared to be expedient, in regard to the Bills now before Parliament, for transferring the District Bankruptcy business to the County Courts, and giving them an original jurisdiction in a numerous class of cases in Equity. These frequent alterations in the jurisdiction of the County Courts, whilst a Government Commission is pending for the express purpose of amending the practice and pleadings in the

Superior Courts, and for considering the costs and incidental expenses, appear undesirable and highly inconvenient.

Law of Evidence.—The Law of Evidence Bill contains several clauses which, duly amended, may possibly have a beneficial effect in the administration of justice, particularly in regard to the inspection and proof of documents, and may usefully supersede the expensive and dilatory proceeding by bill of discovery in Chancery, by enabling either party to examine the other on oath, *videlicet*, before a competent officer, previous to trial; but the Council are of opinion that the universal admission of the evidence of the parties themselves and their wives in support of their respective claims or defences, will, on the whole, be dangerous to the due administration of justice; and, from the information they have received from many practitioners of great experience, they believe that the general opinion of the profession is adverse to the proposed change. Feeling, however, that the question is one of very grave importance, the Council have submitted to the House of Lords a petition, praying that the bill should be referred to a Select Committee, by whom evidence might be taken, and the subject duly weighed in all its bearings.

Registration of Assurances.—The Registration of Assurances Bill has been several times very carefully considered by the Council, and they felt it to be their duty to present a petition to the House of Lords, in which they set forth the result of their experience with regard to the evils which, by a general registration of deeds, it was attempted to remedy; pointing out the rare occurrence of any injury arising from the suppression or loss of deeds, the delay which would arise from registration in obtaining temporary loans, the great exposure attending such transactions, a continuance of the same expense for sixty years to come, of investigating titles, the additional expense of searches, caveats, and duplicates; all which costs, in small purchases and mortgages, would be very detrimental to the parties engaged in them. The petition also pointed out the almost insuperable objections to the proposed map of the whole property in the kingdom, on which the plan of registration was based.

The Select Committee of the Lords to which the petition was referred did the Council the honour of requesting printed copies of their petition, which were immediately supplied. Their lordships ultimately rejected that part of the bill which related to Maps and Land Indexes, and substituted a registration by the name of grantors only. The bill having been reprinted, the Council again examined into the practicability of the measure, and felt it to be their duty to state the objections which still remained, and several of which were increased by the new form of the scheme.

The bill leaves it to the registrar to divide the country into districts as he may think convenient, and gives no rules to guide or control

him in the exercise of his powers. This statement has been submitted to the Members of the Select Committee, and other Peers, and is still before them.

Taxes on Justice.—On occasion of the bill for the appointment of a new Vice-Chancellor, the Council considered it a fit opportunity to petition the House of Commons, stating, amongst other points, that the salaries of the Judges in the Courts of Law are paid by the nation at large, and submitting that the expenses attending the administration of public justice in all departments ought to be so paid, and that, therefore, the salaries of the judges and officers of the Courts of Equity ought not to be supplied from any private source, but should be paid out of the Consolidated Fund. The fees actually levied on the suitors of the Court during the last year amounted to upwards of 200,000*l.*, operating as a tax upon the administration of justice, and, in a considerable degree, accounting for the heavy and burdensome expenses so much complained of in the proceedings of the Court of Chancery. In the bill just introduced for appointing *Two Appeal Judges in Chancery*, it is proposed that their salaries of 6,000*l.* each shall also be paid out of the Suitors' Fund. The Council will immediately consider the measures to be adopted for preventing this additional burden on the suitors, which ought to be borne by the community at large.

Criminal Law.—In regard to the Bill for the administration of Criminal Justice, the Council submitted to Lord Campbell the expediency of an addition to the clause by which any Court, judge, justice, &c., may direct a prosecution against a person guilty of perjury before them. The 20th clause of the amended bill limited this power to the Judges of the Superior Courts, Justices of the Peace, Recorders, Commissioners in Bankruptcy or Insolvency, and County Court Judges; and the Council suggested that Sheriffs and their lawful deputies, before whom writs of trial and writs of inquiry from the Superior Courts were executed, should also be empowered to direct prosecutions for perjury in cases arising before them on the execution of such writs.

They have also taken into consideration other bills intended to effect alterations in the Law,—viz. the several *Copyhold Emfranchisement* Bills, one introduced by Mr. Aglionby, and another by Mr. Mullings; the Landlord and Tenant's Bill relating to *Emblements and Fictures*, brought in by Mr. Mullings; the bills for facilitating the proceedings and diminishing the expense of *Letters Patent* and the *Railway Audit* Bill, which has been before Parliament both in the last and present Session. But which latter bill has been lately thrown out.

[To be continued.]

SELECTIONS FROM CORRESPONDENCE.

DECISIONS ON ASSESSED TAXES ACTS.—
ATTENDANCE OF ATTORNEYS.

To the Editor of the Legal Observer.

SIR,—I find that on two cases, determined by District Commissioners, and afterwards submitted to the Judges for their opinion, Attorneys were permitted to appear as agents, without fee, reward, or hire, to advocate the claims of appellants, notwithstanding the following words in the 26th sect. of stat. 43 Geo. 3, c. 99:—"No barrister, solicitor, or attorney, or any person practising the law, shall be allowed to plead before the said Commissioners on such appeal for the appellant or officers, either *videlicet* voce or by writing."

I do not know on what just grounds the legislature permitted the insertion of such a restriction, or the enactment of the 74th section of the stat. 43 Geo. 3, c. 161, which states,—“That if, according to the opinion of any of the said judges to whom any case shall, at the request of the appellant or appellants, be transmitted in pursuance of any of the directions contained in this act, the charge or surcharge upon which the question contained in such case shall have arisen shall be confirmed and established, the person or persons so charged or surcharged shall, for the costs and charges attending the same, pay to the use of his Majesty, his heirs and successors, the sum of 40s. in addition to the assessment or surcharge so confirmed and established as aforesaid, and which costs shall be added to such assessment, and levied and collected therewith, and as part of the duties so assessed.”

There are numerous cases in which surveyors have been defeated and the judges have overruled the tax officers, and it seems to be just that the tax surveyor, inspector, or assessor should pay 40s. costs too; for the assessors have it in their power to gratify local influence, and by *wrong assessment* affect a title seriously.

Your reforming readers may consider a barrister more fitted to act as a District Commissioner than the country gentleman, the local magistrate, the clergyman, or the tradesman; and a Revising Tax Court would still require the aid of a clerk and appellants be heard there in person or by attorney. At present, the Crown Surveyor in self-defence seeks, and undoubtedly has, the aid of the high legal authorities at the Treasury and Somerset House by a previous communication and an opinion before the day of hearing the appeal. The code of unpublished (I say unpublished because they are not generally published) cases are known to the surveyor, but not to the appellant, his attorney, or even his counsel.

A. W.

[In our Postscripts we have given numerous Decisions on Assessed Tax cases.]

THE COUNTY COURTS BAR.

T H E C O U N T Y C O U R T S B A R

A CORRESPONDENT has sent the following report relating to the resolutions lately passed at the “Grand Court” of the Northern Circuit holden at Lancaster, affecting the etiquette of the Bar with reference to the County Courts:—

“It has hitherto, since the institution of these Courts, being considered doubtful whether a barrister could, consistently with the old-established etiquette of the profession, accept a brief in any of those Courts with a fee less than two guineas. This question was brought under the consideration of the Grand Court, and at a very full meeting it was decided that it was not contrary to etiquette for a barrister to hold a brief in a County Court without a special fee; but that any barrister might accept and hold a brief in any of those Courts with a fee of one guinea only, if he thought fit to do so.

“It was not denied that the etiquette of the profession had been otherwise up to this time, but it was declared that the County Courts were likely to introduce so great a change in a considerable part of the practice of the profession, and that they formed a case so very different from that of the Courts in which the ancient practice had been observed, that it had become necessary to abandon the old rule, so far as the County Courts were concerned.

“It was also decided at the same Grand Court that it was quite in accordance with the etiquette of the profession for barristers to attend, and to sit in the County Courts, and to form a Bar there, if they thought fit to do so.”

It will be observed that these resolutions do not contravene the old practice of the Bar that briefs must be delivered through the medium of an attorney. If a Bar should be formed in the larger towns, they will, of course, still prefer to receive their instructions from professional men. Such as do not, will be the less reputable, and they will not be retained by respectable attorneys. The evil will thus be cured, for those who act contrary to the well-understood rule will gain nothing in the result.

MOOT POINT.

CONSTRUCTION OF WILL.

A., by his will, made previous to the act 7 W. 4, & 1 Vict. c. 26, devises certain freehold houses to his son, B., without words of limitation—provided that in case his said son should die before 24 years of age, and “without lawful issue,” he gave the same houses to his daughter, C. B. attained 24. What estate did he take?

W.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Glyn v. Coulfield. Feb. 27, March 1, 3, 5, Aug. 5, 1851.

PRODUCTION OF DOCUMENTS RELATING TO AFFAIRE OF A COMPANY. — BY PARTIES SUING ON BEHALF, &c.

Upon appeal from, and confirming the decision of, Vice-Chancellor Knight Bruce, an order was made for the production of certain documents admitted by the defendants' answer to be in their possession, in aid of certain actions at law and of the defence to a suit in equity brought by the defendants, who were appointed to act generally in England for the Bengal Indigo Company to investigate the company's affairs, on behalf of themselves and the other shareholders, except the plaintiffs, to restrain such actions at law and to obtain relief against the alleged liability of the company to the plaintiffs in respect of certain debentures.

This was an appeal from an order of Vice-Chancellor Knight Bruce directing the production of certain documents admitted by the defendants' answer to be in their possession. The bill was in the nature of a cross bill of discovery in aid of certain actions at law, and of the defence to a suit in equity which was brought by the present defendants Mr. Coulfield, Mr. Elliott, and Mr. Wilson, on behalf of themselves and the other shareholders in the Bengal Indigo Company, except the present plaintiffs, to restrain the proceedings in the actions and to obtain relief against the alleged liability of the company or of its members to the plaintiffs upon certain debentures. The documents sought to be produced were in the possession of Mr. Elliott, Mr. Wilson, and Mr. Brownrigg, members of the committee acting in England for the company generally to investigate the affairs of the company, and their production was resisted on the ground of the absence of parties who were interested therein.

R. Palmer and Cotton, in support of the appeal, cited *Taylor v. Rudell*, Cr. & Ph. 104; *Murray v. Waller*, Cr. & Ph. 114; *Reid v. Langlois*, 1 M'N. & G. 627; *Lopes v. Deacon*, 6 Beav. 254.

Bethell, Rolt, and Selwyn for the respondents.

The Lord Chancellor, after taking time to consider, said that the ground upon which the production of the documents in question was withheld, could not be supported, as the appellants admitted the documents in their answer to be in their actual possession, and they sufficiently represented the company, referring to *Walburn v. Ingilby*, 1 Myl. & K. 61, which was clearly distinguishable from the other cases.

Rolls' Court.

Lancashire and Yorkshire Railway Company v. Evans and others. July 31, August 1, 1851.

LANDS' CLAUSES' ACT.—INJUNCTION.—ASSESSING COMPENSATION FOR INJURY TO RESERVOIR.

An injunction was dissolved to restrain the owners of a bleaching mill from proceeding in pursuance of a notice under the 8 Vict. c. 18, to assess the amount of compensation payable by the plaintiffs, a railway company, for having rendered impure and unfit for bleaching purposes the water in a reservoir over which the company had purchased the right to build a bridge.

THIS was a motion to dissolve an injunction which had been granted by the late Master of the Rolls on Sept. 6, 1850, to restrain the defendants from proceeding to assess the amount of compensation claimed by them pursuant to a notice under the 8 Vict. c. 18, dated 22nd August, in respect of damage done to their premises by the construction of the plaintiffs' railway. It appeared that the defendants had purchased the lease of a drying and finishing mill for bleaching at Newton, near Manchester, and certain reservoirs whereby it was supplied with water, and that the plaintiffs, who had previously bought some of the land which formed part of bleaching grounds, and built a bridge over one of the reservoirs, had rendered the water impure and unfit for bleaching purposes, whereby the defendants' goods had been injured.

Follett and Little in support of the motion; *R. Palmer and Fleming*, contra, on the ground the plaintiffs had already paid to the former lessee and tenant in fee the amount awarded which included both purchase-money and compensation.

The Master of the Rolls dissolved the injunction, but under the circumstances without costs.

Vice-Chancellor Knight Bruce.

Gooch v. Gooch. July 30, 1851.

TURNER'S ACT.—HUSBAND AND WIFE.—PAYMENT OFF OF INCUMBRANCE ON WIFE'S ESTATE.—SPECIAL CASE.

The husband of the defendant had upon his marriage with her paid off an equitable mortgage by deposit of title deeds on certain real estates to which she was entitled, but without taking an assignment of the mortgage or taking possession of the title deeds. Upon his death intestate, held, on special case under the 13 & 14 Vict. c. 35, that the mortgage remained due to his estate, and that the wife took her property subject thereto.

UPON the marriage of the defendant, Mrs. Gooch, with her husband in Feb. 1850, it appeared she was entitled to certain real estates which were charged to the amount of 800*l.* under an equitable mortgage by the deposit of the title deeds, and that her husband had paid off the mortgage, but without taking any assignment or holding the deeds. He died in the following May intestate and his wife administered to his effects, and a question was submitted for the decision of the Court in the form of a special case under the 13 & 14 Vict. c. 35, whether the wife was entitled to take the estate free from the debt.

Glasse and Selwyn for one of the husband's next of kin; *J. Bailey and Waley* for another of the next of kin, contended that the 800*l.* was not intended to be a gift to the wife, but remained due to the husband's estate upon the mortgage.

Russell and Terrell for the widow, contra.

The Vice-Chancellor held, that the facts did not show any intention to give the money to the wife, and that the husband's estate was entitled.

Vice-Chancellor Lord Cranworth.

Esparte Hodson's Trust. July 30, 1851.

TRUSTEES' RELIEF ACT.—PETITION FOR PAYMENT OUT OF COURT.—REFERENCE AS TO LEGITIMACY OF CHILDREN OF TESTATOR.

The Court refused to make an order on petition, without a reference to the Master as to whether the testator's nephew, whose children were entitled to the fund, had left any lawful issue, it being sworn on behalf of the petitioner who took in the event of there being none, that they were illegitimate,—for payment out of Court of the fund which had been paid in by the executor under the 10 & 11 Vict. c. 96.

By his will, Mr. Hodson gave a sum of 4,400*l.* to his nephew, William Fourden, for life, with remainder for his children, and in case there were no such children, then to Reginald Fourden. It appeared that the nephew died in 1849, leaving several children, but it was contended by Reginald Fourden that he had never been married and the executor having paid the fund into Court under the 10 & 11 Vict. c. 96, (The Trustees Relief Act,) this petition was presented by Mr. R. Fourden for payment out to him.

Stuart and Hislop Clarke in support, upon affidavits to the effect that the nephew had never married.

The Vice-Chancellor said, the order could not be made without a reference to the Master, and if no positive evidence could be discovered, the petitioner must undertake to refund if it should turn out the children were legitimate.

Vice-Chancellor Turner.

Hills v. Macras. July 22, 1851.

CREDITORS' CLAIM AGAINST ESTATE OF DECEASED PARTNER.—SURVIVING PARTNER NECESSARY PARTY.

The surviving partner was held a necessary party to a creditor's claim against the estate of a deceased partner to recover a partnership debt, and was directed to be summoned before the Master under the 18th and 19th Orders of April, 1850.

W. Morris appeared on this claim which was filed, under the Orders of April, 1850, to obtain payment out of the estate of one of the deceased partners of a debt owing by a partnership firm of Messrs. G. Potter & Co., and to which it appeared the surviving partner had not been made a party. The learned counsel referred to the 32nd Order of August 26, 1841, which provides, "that in all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the Court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable."

The Vice-Chancellor said, that as the surviving partner was liable at law to pay the debt, he should be made a party to a suit against the estate of the deceased partner, and that he must therefore be summoned before the Master under the 18th and 19th Orders of April, 1850.

Court of Queen's Bench.

Regina v. York Newcastle and Berwick Railway Company. June 2, 1851.

RAILWAY.—MANDAMUS TO CONSTRUCT BRANCH LINE.—LACHES.

A rule was made absolute for a mandamus on a railway company to complete a branch railway which they were empowered under their act to construct, where a period of 40 days only remained before the expiration of their compulsory powers—it not appearing that they could not possibly obey the writ, or that there was any want of funds, or that the assent of the landowners could not be obtained.

THIS was a rule nisi for a mandamus upon the defendants to issue the necessary notices to landowners and construct a branch railway from Thirk to Malton in pursuance of their act (9 & 10 Vict. c. lviii.) which passed in June, 1846. The time for the compulsory purchase of land expired as to part of the line on July 13 last, and as to the other portion on July 22nd.

Sir F. Kelly, Knowles, and Atherton, showed cause against the rule on the ground there was only 40 days before the compulsory powers of the company would expire, and that there had been laches in allowing 4½ years to elapse before this application.

Sir F. Thesiger and T. P. E. Thompson in support.

The Court said, that as in the present case it was not shown that the company could not possibly obey the writ, or that there was any want of funds, or that the assent of the landowners could not be obtained, the rule must be

made absolute, and if the company denied their liability to make the railway, the question would have to be determined upon the return.¹

Rule absolute for mandamus.

Court of Common Pleas.

Earl of Clarendon and others v. Parish of St. James', Westminster. May 2, 1851.

LITERARY SOCIETY.—EXEMPTION FROM POOR-RATE.—OCCUPATION OF PREMISES FOR PURPOSES OF SOCIETY.

Where a society came within the provisions of the 6 & 7 Vict. c. 36, as a society for the purpose of promoting literature, but did not occupy for the purposes of the society the house in respect of which exemption was claimed, but had underlet a portion to other societies and received rent for the same: Held, on special case from the Middlesex Sessions, that they were liable to be rated to the relief of the poor.

THIS was an appeal in the form of a special case from the decision of the Middlesex Quarter Sessions, holding that the "London Library," situate at No. 12, St. James'-square, was liable to be rated for the relief of the poor, and was not within the exemptions of the 6 & 7 Vict. c. 36. It appeared that the society was established in 1841, for the purpose of promoting literature by lending books to its members to read at their own houses or at the library, and was supported by the voluntary contributions of its members, and divided no dividend or bonus among them. Part of the premises, however, had been underlet to the Philological Society, the Statistical Society, and the Hakluyt Society, at rents amounting to 185*l.* per annum, but the whole of which was laid out towards the expenses of the library.

Chamell, S. L., and D. D. Keane, for the respondents, cited *Regina v. Brandt*, 41 L. O. 300.

Crowder and Parry for the appellants.

The Court said, that although the society was a literary society within the 6 & 7 Vict. c. 36, yet as they did not occupy the building which they claimed to be exempted from rates for the purposes of the society, but had underlet to other societies a portion of their premises, it could not claim to come within the exemption of the act, and judgment must be for the respondents.

Court of Exchequer.

Bland v. Campbell. July 11, 1851.

SHIP.—AUTHORITY OF MASTER TO PLEDGE OWNER'S CREDIT.

Held, that the power of the master of a ship to pledge the credit of his owner extends only to things necessary for the ship; and therefore he was held not authorised to

borrow money to pay a debt incurred for towing the vessel into her port of destination, or to pay a carpenter for certain repairs done to the ship where the services to the ship had not been refused, unless ready money were paid, and the owner resided within a day's post of the port of destination.

THIS was a rule nisi for a new trial of this action which was brought to recover certain moneys which had been lent by the plaintiff to the master of the defendant's vessel in order to pay the owner of a steam-tug for having towed the ship into the port of Newcastle-upon-Tyne, and a carpenter for repairs he had done for the vessel.

Cur. ad. vult.

The Court said, that the rule must be made absolute to set aside the verdict for the plaintiff and for a new trial, as the Master had no power to pledge his owner's credit under the circumstances. His authority only extended in respect of things necessary for the ship, or where no credit was given. In the present case, no advantage accrued to the owner, as the tug-owner had already given credit in making him the debtor to the plaintiff instead of the tug-owner, nor was it necessary to pay the carpenter without communicating to the defendant who resided within one day's post of the town.

Court of Exchequer Chamber.

Owens v. Breese. June 21, 1851.

WRIT OF TRIAL UNDER 3 & 4 W. 4, c. 42, s. 17.—COUNTY COURTS CANNOT EXECUTE.

Held, reversing the decision of the Court of Exchequer, that the Courts under the 9 & 10 Vict. c. 95, are not Courts of Record within the 3 & 4 W. 4, c. 42, s. 17, to the judges of which writs of trial may be directed in pursuance of the provisions of the latter act.

THIS was a writ of error from the decision of the Court of Exchequer (reported, *Breese v. Owens*, 20 Law Jour. N. S., Exch. 228,) discharging a rule to set aside the order of Mr. Justice Wightman, for a writ of trial under the 3 & 4 Wm. 4, c. 42, s. 17, directing the Judge of one of the Courts, under the 9 & 10 Vict. c. 95, to summon a jury and try the cause and the sheriff to make a return of what should have been done therein. On the trial of the cause, which was before twelve jurors, the plaintiff obtained a verdict, and the rule nisi obtained in the Court below to set aside the judge's order for irregularity, had been discharged without costs, *Pollock, L. C. B.*, and *Alderson, B.*, holding that the order was right, *Parke and Platt, B.B.*, that it was wrong.

By s. 17 of the 3 & 4 Wm. 4, c. 42, it is provided, that "in any action depending in any of the said Superior Courts for any debt or demand in which the sum sought to be recovered, and endorsed on the writ of summons, shall not exceed 20*l.*, it shall be lawful for the Court

¹ See also *Regina v. South Devon Railway Company*, ante, p. 144.

in which such suit shall be depending, or any judge of any of the said Courts, if such Court or judge shall be satisfied that the trial will not involve any difficult question of fact or law, and such Court or judge shall think fit so to do, to order and direct that the issue or issues joined shall be tried before the sheriff of the county where the action is brought, or any judge of any Court of Record for the recovery of debt in such county, and for that purpose a writ shall issue directed to such sheriff, commanding him to try such issue or issues, by a jury to be summoned by him, and to return such writ with the finding of the jury thereon indorsed, at a day certain, in term or in vacation, to be named in such writ; and thereupon such sheriff or judge shall summon a jury, and shall proceed to try such issue or issues."

Bramwell, for the plaintiff, contended that the writ of trial could issue.

Lush, contra.

The Court, (per *Patleson, Maule, Cresswell, Wightman, Erle*, and *Talfourd, JJ.*) said, that

the question was whether these Courts, which were for some purposes Courts of Record, were such Courts of Record as came within the meaning of the 3 & 4 W. 4, c. 42. The proceedings on such writs must be according to the course of common law, and not according to any peculiar practices established by any County Court Judge within his own jurisdiction, or by the act constituting these Courts, and they must also be in conformity with the rules of law prevailing in the Court out of which the writ issued. But if the writ of trial were sent to a Judge of a County Court, he must proceed, not according to the custom of his own County by a jury of five, but according to the rules which prevailed in the Court out of which the writ came, and it was also to be considered that these Courts were an extension of the Courts of Requests and the old County Courts, and they could not therefore be such Courts of Record as the 3 & 4 W. 4, c. 42, intended. Error must accordingly prevail, and judgment be given for the defendant.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF WILLS.

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lunacy, p. 147.

Courts of Equity :

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, pp. 204, 246, 265.

Law relating to Trustees, p. 285.

Evidence, pp. 306, 326.

Jurisdiction in Suits for Discovery, p. 347.

Law of Property and Conveyancing, pp. 366, 385.]

ADEMPTION:

1. *Republication*.—A testator being under-lessee, for a long term of years, of two houses in Gower Street, numbered 63 and 64, and being possessed of two other houses in that street, numbered 67 and 76, for the residues of certain terms for years, bequeathed them to trustees in trust for D. C. for her life, remainder in trust, as to 63, 64, and 67, for his half-brothers and half-sisters, (whom he named), and the survivor and survivors of them for their, his or her lives or life, remainder in trust to sell and divide the proceeds amongst their children living at the death of the survivor of them; and, as to number 76, in trust, after the decease of D. C., for his niece S. C., for life, remainder in trust for her children who should survive her, and, in default of such children,

upon the same trusts as he had declared of the other houses, after the death of D. C.; and he gave the residuum of his effects to D. C., and appointed her his executrix.

The testator, some years after the date of his will, took an assignment of the original lease, which comprised numbers 63 and 66 as well as 63 and 64; and a few months afterwards, made a codicil, by which he confirmed his will. He subsequently made another codicil, which was, in part, as follows:—"I also give, subject to her life-estate, one moiety of the residue of my estate, unto and amongst my nephews and nieces living at my decease, payable in like manner as, by my will, is directed concerning their shares and interests in the reversion of my houses in Gower Street, except that their shares and interests in the said moiety, is to depend solely on the decease of my executrix." D. C. and all the testator's half-brothers and half-sisters, died before the suit was commenced.

Held, that though the bequest, in the will, of numbers 63 and 64, was adempted by the testator taking an assignment of the original lease, the effect of the last-mentioned codicil was to entitle the children of the testator's half-brothers and half-sisters who were living at the decease of the survivor of them, to the testator's interest in numbers 63 and 64 as it existed at his death. *Porter v. Smith*, 16 Sim. 251.

2. A testator in Jamaica having given a general power of attorney to sell out a particular stock, made his will, bequeathing the stock specifically. He afterwards drew bills on the attorneys, and, by letter, requested them to dispose of a portion of the stock to repay themselves. The bills were paid. Soon afterwards the testator died, and after his death, his with-

out knowledge of it, the attorneys sold out a portion of the stock, and repaid themselves: *Held*, that neither the direction to sell nor the sale after the testator's death adeemed any part of the legacy. *Harrison v. Archer*, 2 De G. & S. 436.

CODICIL.

A testator, by his will, devised his residuary real estate to trustees, in trust for certain tenants for life, with remainder to D. F. for life, with remainder in trust for the sons of D. F., as tenants in common in tail male, with cross-remainders and remainders over. And he directed his residuary personal estate to be laid out in the purchase of land, to be settled to the same uses. By a testamentary paper of the same date as the will, and headed, "Memorandum, alias, directions to my executors," he directed, as to his residuary personal estates, that his executors should apply for an estate of an uncle of the testator as an investment "for the use and behoof of D. F.; and, if not attainable, to inquire if any part of a certain other estate was to be disposed of."

Neither of the specified properties could be obtained on fair terms, as an investment: *Held*, that D. F. did not take any further interest under the codicil than under the will, and that the testator thereby either meant to express merely a recommendation to his trustees as to the mode of laying out his residuary personalty, or expressed no intention on which the Court could act. *Fitch v. Friend*, 2 De G. & S. 405.

See *Republication*.

CONDITION.

Legacy.—Testator gave a legacy in trust for his daughter for life, remainder in trust for her children who should attain 21, remainder in trust for two of his sons absolutely; and he gave the residue of his personal estate to his other children. By a codicil, he declared that, finding that his daughter intended to become a nun, he revoked the bequest, in the event of her carrying her intention into effect, and excluded her from all reversionary advantages from his will. The daughter became a nun: *Held*, that the condition annexed, by the codicil, was a lawful one; and that, though the bequest in favour of the daughter was merely revoked, and there was no gift over on breach of the condition, her interest under the bequest ceased on her becoming a nun. *In re Dickson's Trust*, 1 Sim. N. S. 37.

See *Forfeiture; Husband and Wife*.

CYPRES.

Estate for life.—Estate tail.—Shifting clause.—Devise of lands of gavelkind tenure to trustees, upon trust to sell a competent part for the payment of debts, and subject thereto upon trust for P. M. for life, and after his decease for the first son of P. M. for life, and after his decease for the first son of such first son and the heirs male of his body, and in default of such issue for every other son of P. M. successively, for the like interests and limitations; and in default of issue of the body of P. M., or in case of his not leaving any at his decease, for T. M. for life, and after his decease for T. G. M., the eldest son of T. M., for life, and

after his decease, for the first son of T. G. M., and the heirs male of his body; and in default of issue of the body of the said T. G. M., for every other son of T. M. successively, for the like estates and interests; and, on failure of all such issue of the body of P. M., upon trust for him, his heirs, and assigns for ever; provided that, if P. M., or T. M., or any of their issue, should become entitled to the Jodrell estate, then the trustees should stand seized of the devised premises, upon trust for the next person entitled thereto under his will, as if the person so succeeding to the Jodrell estate were dead. T. M. died after the date of the will, and the testator by a codicil declared that his trustees should stand seized of the devised estates, upon trust for his wife for her life; and from and after her decease, upon the trusts declared by his will, subject to the declaration therein contained with reference to the Jodrell estate: *Held*, that P. M. took an estate for life only.

That T. G. M. took an estate for life in remainder after the life estate of P. M., contingent on P. M. not leaving any issue at his decease, and determinable on his becoming entitled to the Jodrell estate.

That the eldest son of T. G. M. took a contingent remainder in tail, after the determination of the life estate of his father. *Monypenny v. Dering*, 7 Hare, 568.

Cases cited in the judgment: *Langston v. Langston*, 8 Bli. N. S. 167; *Pitt v. Jackson*, 2 Bro. C. C. 51; *Nicholl v. Nicholl*, 2 W. Bl. 1159; *Humberston v. Humberston*, 1 P. Wms. 352; 2 Vern. 737; *Pre. Ch.* 455; *Gill. Eq. Ca.* 128; *Chapman v. Brown*, 3 Burr. 1676; *Mandeville's case*, Co. Litt. 266; *Ellicombe v. Gompertz*, 3 M. & C. 151; *Wilson v. Eden*, 1 Exch. 786; 11 Beav. 289.

DISPUTING WILL.

See *Forfeiture*.

ELECTION.

1. A testator devised to the plaintiff all his freehold house at T., then on lease to T. U., and he bequeathed all his undivided moiety in a leasehold house at P. to his niece and heiress-at-law. The testator had no house at T., but he and his niece were entitled, in undivided moieties, to two houses at T.: *Held*, that the language of the will showed an intention to devise the entirety of the house, and that, consequently, a case of election arose against the niece. *Padbury v. Clark*, 2 H. & T. 341; 2 M. & G. 298.

The rents of the freehold house had been received by the father of the niece, who was an infant, until some years after the lease expired, and on her attaining 21 he accounted to her for the rents. She shortly afterwards made a mortgage of the entirety of the leasehold house, and of the moiety of the freeholds at T., and upon her marriage, executed a settlement which comprised the same property. A lease was afterwards executed of the freeholds, in which the plaintiff concurred with the testator's niece and the trustees of her settlement: *Held*, that, under the circumstances, no election had already been made by the niece; and she, electing at the hearing to take against the will, was de-

ceded to account for the rents received on her account in respect of the leaseholds. *Padbury v. Clarke*, 2 H. & T. 341.

2. *Lapse of time*.—On a question of election by a party bound to elect between two properties, it is necessary to inquire into the circumstances of the property against which the election is supposed to have been made; for if a party so situated not being called on to elect continues in the receipt of the rents and profits of both properties, such receipt cannot be construed into an election to take the one and reject the other; and, in like manner, if one of the properties does not yield rent to be received, and the party liable to elect deals with it as his own by mortgaging the same, &c. (particularly if this is done with the knowledge and concurrence of the parties entitled to call for an election), such dealings will be unavoidable to prove an actual election as against the receipt of the rents of the other party.

The liability of a party to be called upon to elect will not be affected by lapse of time so long as his interest in either of the subject matters of election is reversionary. *Padbury v. Clark*, 2 M.N. & G. 298.

3. *Compensation or forfeiture*.—*Lien*.—*A. B.*, an heir, elected to take against the will, and required the executors to complete a contract entered into by the testator for the purchase of a freehold estate, and it was conveyed to him. He nevertheless received great benefit under the will: *Held*, that the parties disappointed by the election, had no lien on the estate for the amount received; but that they were entitled to prove against the estate of *A. B.* for the whole amount received by him under the will. *Greenwood v. Penny*, 12 Beav. 483.

ERASURES AND INTERLINEATIONS.

A testator who died in 1821, struck the name of one of the devisees out of his will, and interlined the names of two other persons above the erasure; but these alterations were not noticed in the attestation clauses, nor was there anything to show, or from which it could be inferred that they were made before the will was executed.

Held, that they did not affect the devise. *Simmons v. Rudall*, 1 Sim. N. S., 115.

Case cited in the judgment: *Cooper v. Brockett*, 4 Moore, P. C. 449.

FORFEITURE ON DISPUTING WILL.

Issue devisavit vel non.—*Lametic testator*.—A testator, seized of large real estates, made a will, by which he gave certain benefits to his daughter, who was his heir, and a married lady: and declared that, if she or her husband, or any person on their or either of their behalf, should dispute his will, or if any proceedings should be taken, by any person whomsoever, by any possible result of which any estate or interest could be in any way attainable by his daughter or her husband, of larger extent than was intended for her by the will, and she and her husband should not formally disavow, stay, or resist such proceedings to the best of their ability, then he revoked the benefits given to her. The testator was the subject of a com-

mision of lunacy when he made his will, and continued so until his death. In a suit by the trustees of the will, to establish it, the plaintiffs proved that the testator was of sound mind when he made his will; and there was no evidence to the contrary. Nevertheless, the Court directed an issue *devisavit vel non* to be tried, the plaintiffs to be plaintiffs at law, and a gentleman, with whom the husband had entered into a covenant during the infancy of his wife and in the lifetime of her father, to make a settlement of any estates that she might thereafter become entitled to, to be the defendant at law. *Cooke v. Cholmondeley*, 2 H. & T. 162; 2 M.N. & G. 18.

Protection against clause of forfeiture.—In order to protect the heiress-at-law from the clause of forfeiture contained in the will, the Court directed a statement to be inserted in the order that the issue was directed at the instance of the trustees of the settlement. *Cooke v. Cholmondeley*, 2 M.N. & G. 18.

See Condition: Election, 3.

HEIR.

Statute of limitations.—A testator died in 1821, having devised and bequeathed his real and personal estate to trustees upon certain trusts. In 1826, a bill was filed for the execution of the trusts as to the personal estate. In 1847, a supplemental bill was filed raising questions on the will, as to the real estate, in which the heir, who was then unknown, was interested; and, in 1849, another supplemental bill was filed to bring the heir, who was then ascertained, before the Court.

Held, that the heir was barred, by lapse of time, from claiming the real estate adversely to the trustees, but that he was not barred from claiming part of the real estate as being, in the events that had happened, undisposed of and held, by the trustees, in trust for him. *Simmons v. Rudall*, 1 Sim. N. S. 115.

See *Thellusson's Act*, 3.

HUSBAND AND WIFE.

1. *Jegacy*.—*Condition contrary to public policy*.—A testator bequeathed an annuity to his daughter, a married woman, "in case she shall be living apart from her husband, and should continue so to do" during the lifetime of his widow, with a direction, that if at any time the annuitant should cohabit with her husband, the annuity should cease. By the same will, he bequeathed a share in the residue, upon trust, to pay the income to the same daughter during such time as she should continue to live apart from her said husband; but should she at any time cohabit with him, the testator directed that during such time the income should be paid between other legatees. The will also contained a trust for children of the daughter by any other husband. At the date of the will the daughter and her husband were living apart, but before and at the date of the testator's death, they were reconciled, and living together, and so continued to live: *Held*, that the daughter was entitled to the bequest. *Wren v. Bradley*, 2 De G. & S. 49.

[To be concluded in our next Number.]

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PROFESSIONAL REMUNERATION.

PROPOSED IMPROVEMENTS.

THE objections to the present system of professional remuneration, estimated by the length of the pleadings or proceedings, have often been under consideration; and the extensive changes which are now projected in the pleadings and procedure of the Courts, have lately occasioned much discussion on various suggestions for removing the existing objections and establishing an improved method of remuneration.

The first legislative attempt to remedy the evil was made by the act for shortening the forms of leases, in which power was given to the Taxing Masters to allow costs not according to the length of the instrument, but the skill and labour employed and responsibility incurred. The enactment was confined to the instruments under that statute, and as very few have been prepared, the Taxing Masters have rarely, if ever, been called upon to exercise the discretionary authority vested in them. It was afterwards attempted to extend the provisions of the Short Form Leases Act to all conveyances, but the bill did not pass, and we have therefore little or no experience to guide us. The proposed new plan of remuneration has been much inquired into by the Select Committee of the House of Lords on the Masters' Primary Jurisdiction Bill. As that bill, if passed, would in an extensive class of cases have rendered pleadings unnecessary, it naturally became important to consider how the solicitors' charges were to be estimated under the altered practice. It is well known that their fees on numerous matters of business, and for attending warrants before the Master, are very inadequate, and that the profits on the pleadings were supposed to afford some

compensation for the labour and skill in respect of which they were insufficiently paid.¹

Several of the witnesses before the Select Committee were requested to state their opinions regarding the present practice of paying solicitors. We shall give extracts from their evidence on this subject, and offer some remarks on the result. The suggestions which have been made comprise various modes of allowance in lieu of specific charges according to the length of the papers, and for each step which a solicitor takes in a suit.

1st. It is proposed by some that the payment should be made in the form of an *ad valorem* commission, or per centage on the value of the subject matter in question.

This method would be satisfactory in, perhaps, the majority of cases, but it frequently happens that the amount of property in litigation is much larger than is actually recovered. The solicitor may be employed to claim a large sum of money or extensive property, and may take all due means to obtain the whole which his client seeks, but from no fault of his may fail as to the larger part. The new scale of allowance should, of course, therefore, provide for cases of this kind. Again, it often occurs that the subject matter of a suit is not of a pecuniary nature, and the value of

¹ To show the inadequacy of the solicitors' fees, it may be sufficient to state that the fee of 6s. 8d. for attending the Master includes all the time and trouble of perusing papers and preparing for the argument, and going and returning from the solicitor's place of business, and as warrants are issued generally at considerable intervals, the preparation must be renewed, almost on each occasion. No "refreshers" are allowed, and it will be recollected that whilst 6s. 8d. is the solicitor's fee, that of the barrister is three guineas.

the solicitor's services cannot be estimated with reference to any stated sum in dispute. In such instances the peculiar nature of the case should be considered, and the Taxing Master authorised to exercise his discretion.

2nd. It is proposed by several of the witnesses that the solicitor should be paid by the "piece or job;" that the taxing officer should take all the circumstances of skill, labour, and responsibility into consideration, and award such sum as he thought right. The objection to this might be that the solicitor would not only be placed too much in the power of the taxing officer, but that the officer would scarcely be able, however well-disposed to discharge his duty, to come to a just conclusion on each individual case. It is supposed, however, that some general rules would be practically established for the guidance both of the solicitor and the taxing officer, and that the discretion would be exercised within certain limits, so that the solicitor on commencing his labours might reckon, without much uncertainty, upon a reasonable compensation in the result.

The solicitor, on making his claim before the Taxing Officer, would, of course, prepare a statement of the professional services he had rendered. Some would be content with a general account of the principal steps taken, the number of attendances on witnesses, on the client, the Court, the Master, or other officers, and on the opposite party—the papers prepared, letters written, &c., which might enable the Master to form a tolerably just estimate of the total sum to be allowed. Other practitioners might deem it expedient to set down nearly all the particulars of the business now comprised in a bill of costs. The solicitor would probably be required to state the sum he claimed for the work done. If the officer thought it reasonable, or made but a moderate deduction, all would be well. But suppose he made a large reduction which the solicitor considered unjust, how would the appeal come before the Court or a Judge at Chambers? Would the Master state the grounds on which he estimated the amount, or his reasons for disallowing part of the sum claimed, and so enable the Court to consider their propriety, or must the whole matter come before the judge? The latter course would evidently involve details on which the judge could scarcely possess practical knowledge sufficient duly to decide, and if he were enabled to do so, the discussion would frequently be of inconvenient length.

3rd. Instead of these allowances in gross for an entire suit, certain stated fees might be fixed for each stage of proceeding, such as are prescribed in the claim orders; but with power to increase the amount under special circumstances. A Committee of the Taxing Masters and Solicitors might devise a satisfactory scale, adapted to the majority of cases, and guided by the general principle of allowing fairly and equitably for the solicitor's services.

4th. Another mode of remuneration, would be to allow the solicitor for perusing papers and taking instructions from his client according to the time actually employed, instead of the common and ordinary fees, and proportioned to the difficulty and importance of the case, and the labour and responsibility of the solicitor. This would apply not merely to the commencement of a suit but to all the pleadings and proceedings; the preparation of briefs, cases, petitions, affidavits, &c. Then the charge for attendances on the Court should be regulated by the length of time;—thus, if a whole day were occupied, not less than three guineas should be allowed; and numerous attendances and correspondence not now included in the taxation, or scantily remunerated, should be allowed according to the nature and magnitude of the case.

5th. In addition to the allowances made either by per centage, by the job, by stated fee, or by any other scale, the solicitor should be allowed interest on his disbursements, calculated either yearly or half-yearly, that is, at the expiration of the first year or half-year the amount of disbursements would be ascertained, and from that time interest allowed, and so on from time to time till the costs were paid.

It has also been recommended, that there should be a "fee on ending" proportioned to the exertions used by the solicitor as a reward for expediting the proceedings. It is also suggested, that the limitation of the fee for a whole day to two guineas is unjust and injudicious. If the solicitor for the sake of despatch be willing to continue his labour for 12 instead of six hours, he should be remunerated for his extra time. And so, on very special and important matters, the fee of 6s. 8d. per hour ought to be increased, especially as one or more clerks of the solicitor may be in attendance to assist.

In this summary we have gone somewhat beyond the suggestions of the witnesses, of the propriety of which our readers will judge, and we shall now proceed to make some selections from the report of the evi-

dence given by Mr. Gregory, Mr. Field and Mr. Lake, the eminent solicitors, and of Master Brougham and Mr. Commissioner Fane.

Mr. Gregory's evidence on the subject of Professional Remuneration, is as follows:—

"Suppose this bill were to pass, would your profession sustain any great loss?

"According to the present system of payment, we must necessarily sustain a very considerable loss, and for this reason, that a very large proportion of our profits arises from the fees on the pleadings, the length of the pleadings, and the different proceedings; for instance, that which your Lordship mentions, interlocutory petitions, where probably it is repeated three times over, in the original petition, in the Master's report, and again in the petition confirming that report. Upon those occasions we should lose considerably by the bill passing.

"On the other hand, would there not be a greater number of administration suits commenced than at present?

"That is my opinion certainly, because one would not scruple then to recommend the institution of proceedings.

"To take the benefit of the Court's protection?—Yes.

"Which many parties are now entirely without?—Yes.

"The solicitors at present gaining by that which would be cut off by the operation of the act, if the bill passed, does any mode strike you by which they might obtain a reasonable compensation, by being otherwise paid, and in a way less burthensome to the client?

"That is the object which has, of course, excited one's attention, and is at this moment under consideration a good deal; I do not know of any manner in which it could be done, except by something in the nature of a commission.

"You mean a per-centage?—Yes.

"Upon the funds?—Yes.

"Whereby a professional man would have no interest in either protracting the proceedings in point of time, or lengthening them in point of writing?—Certainly not.

"If it were given as a per-centage upon the piece or job when the business was finished, would not the interest of a professional man, as well as the interest of his client, be, that it should be finished as quickly as possible?—Yes.

"And as cheaply to him as possible?—Yes.

"Supposing that, instead of charging, as you now do, upon each step, and in proportion to each expense, you were to bring in a bill to your client, and say, 'Upon the whole, I have done so much work; I think 20 guineas is a fair charge.' What is your opinion of that?

"Your Lordship knows that at present that would be illegal; but your Lordship would, of course, have it under the superintendence, and under the guidance, of some of the officers of

the Court to decide what that per-centage should be, or what the charge should be.

"So that it should not be the same per-centage in each case, but a different per-centage, according to the nature of the case, and amount of the sums?

"I should say that it ought to be in the discretion of either the Masters, or the Judges of the Court.

"What objection would there be to complete freedom being given to the profession to make such charges as they thought proper?

"The objection in all cases is, I should say, as to the revision; very often a client is not quite competent to judge as he is of mere work done.

"Should you approve of any such power being given?—I think so.

"Would the Court have any difficulty in laying down a principle upon which that revision should take place; in fact, could not the Court estimate the work done by a solicitor, exactly as a valuer can go through the work of a builder, and decide whether his charges have been just or not?

"I should say certainly, with the assistance of the experienced officers that they could call in. It would be work to be judged of by men in the habit of performing the same work themselves; I meant by the intervention of the Taxing Master.

"Has any other plan of remuneration, except the one just alluded to, suggested itself to your mind?

"None: I cannot conceive of any other; they must be paid either by fixed rules which have been established, or else they must be paid according to the skill and trouble that are brought to bear upon the subject by a gross amount.

"Do not you think there would be great difficulty in estimating the amount of skill and trouble employed?

"The persons selected as Taxing Masters now are necessarily men who have been in the profession themselves, and they have usually had the benefit of long experience, and therefore they are almost as well competent to judge as the party who has performed the work; and if it be necessary, I do not know that you could have a better tribunal.

"Do you think yourself that their decisions would be so uniform and so consistent one with another, as not to cause general discontent on the part of professional men; they imagine themselves sometimes too little remunerated in comparison with other remunerations given in other cases?

"I think it is probable that there would be dissatisfaction in many cases.

"Is there not, as it now stands, a very considerable discretion, though the rule is, so many six and eightpences for so many attendances?

"Yes, it has been considerable; the discretion of the Masters of late years, since the appointment of Taxing Masters, has been considerably increased. Formerly, I remember the

time when they were tied down by strict rules, and the grossest injustice was sometimes perpetrated."

Mr. Edwin W. Field's views on the same subject are thus stated :—

"Suppose that, instead of being paid by the length, the Master or the Court had the discretion of paying by the job or by the piece, taking all the circumstances into consideration, the skill and labour required, and the difficulty and importance of the case, and so forth, would that be beneficial in the first place to the *solicitor* ?

"I have not the slightest doubt in the world that it would be of the highest possible importance.

"Would not it tend to shorten the proceedings ?—Very materially, of course.

"Would not it tend to keep out of the proceedings a great deal of that which is now introduced unnecessarily ?—Certainly, very decidedly.

"In consequence of the exceedingly imperfect mode which now prevails of remunerating the professional man ?

"I believe so ; I believe the mode of paying lies at the very root of all the mischief of the Court.

"Does not the client now pay not only in proportion to the labour of the *solicitor*, but also in proportion to the number of copies taken of the writings ?

"The labour of the *solicitor* is not thought of at all ; it is a mere question of length, or of folios ; it is a greater labour to do a thing short than long. My clerk, perhaps, prepares for me a long draft ; if I have it copied and laid before the Court as it is, I am paid for all the words it contains ; if I spend a day in condensing it, and reducing it within proper limits, say, to the extent of half or two-thirds, I cut off half or two-thirds of the emoluments I should have been entitled to if I had never touched it, besides occupying a day upon it, and getting no pay for the day's work either.

"Does not the length of the pleadings, of which of course copies have to be taken, tend very much to increase the expense of the suit ?

"Very much ; the whole of the bill of costs is dependent, in each part of it, upon the length of the pleadings ; even the very number of attendances on the Master that are allowed to be charged for, depends upon the quantity of words written down on the papers that are presented to him. By the present rules of pay, every imaginable temptation is held out to the *solicitor*, and to counsel also, to make things as verbose as they can contrive.

"Do not the fees of counsel, to a great degree, depend upon the length of the brief ?

"They do ; the fees allowed by the Taxing Masters, upon taxation, are almost entirely regulated by the length of the papers ; of course, in contentious business the fees are very much paid by the clients out of their own pocket ;

and, in those cases, as to the fees that we pay to counsel, we should use greater discretion than we can in the cases to which this bill applies, where they are almost every one of them taxed and paid by the authority of the Court ; that is to say, in all administration cases, in all cases where the Court is administering the trust.

"Then, if the *solicitor* were paid by the job instead of being paid in the way in which it is now done, by length, in the first place you say that the party would save a great deal ?—Certainly.

"Would not the *solicitor* himself be benefited by that arrangement upon the whole ?

"It would be a much more agreeable and honourable state of things than the present ; he would be benefited in that way.

"The *solicitor* is at present obliged to make an outlay of money for which he is not recompensed, by advancing money for which he charges his client no interest.—Certainly.

"Would there be any means in most cases, such as those of which you have been speaking, administration cases, which are almost all by consent, of estimating even before the conclusion of the case, how much ought to be paid for the business ?

"I think that most cases of this administrative character may be likened to the common case of a *solicitor* being employed to receive rents, or to manage an estate, in which case he is generally paid by a poundage upon the income. It seems to me that the amount of property at stake in an administrative suit, if the principle is being dealt with, or in a case of maintenance, the amount of the annual income would be a very good guide as to the proper amount of pay that ought to be given to the parties managing the fund ; of course it should be a graduated scale."

Mr. Henry Lake was also examined, and the following part of his evidence bears on this topic :—

"What is your opinion of the present mode of paying *solicitors* ?

"My opinion is, that with regard to legal amendments of any kind that is at the root of the whole question, it is a very unpleasant case, I would say, and it places me in a very awkward position ; for instance, if your clerk lays upon the table a deed running 100 folios, your fee is five guineas, but if you employ the whole day in cutting it down, and making it into a very neat draft indeed, one on which you may pride yourself, the result is, that you have spent the whole day in reducing it to 50 folios, and then the fee has become two guineas and a-half ; but I think that you must pay a man according to his skill, and not according to the number of words.

"In consequence of the mode of paying attorneys so many six-and-eightpences, and so many three-and-fourpences, allowing them nothing for trouble in hunting up pleadings—although I believe, now, they allow consulta-

tions in taxing the costs—in consequence of that mode of paying them, is it not absolutely necessary for a most honest and conscientious attorney, unless he means to starve instead of live by his profession, to put his client to very considerable expenses which are useless?

"I think the client is put to useless expenses; I think at present we could not be properly remunerated unless by length, and other things which are not necessary; if the system were different, I am sure a vast number of expenses would be saved.

"As the case now is, the brief, for instance, is drawn by the attorney to be put into the hands of counsel; has he not an interest in making that brief longer than is necessary?—Yes, no doubt of it.

"He is paid so much the more, the longer it is?—Yes.

"Then, is not the client put to a second expense for the copying of that brief by the engrosser?—Yes.

"Is not the client, in the next place, put to the additional expense of the fee to counsel with the brief, the fee being somewhat in proportion to the length of the brief?—No doubt the same vicious principle applies to that.

"Each counsel having a brief, the client pays for the copying of that brief by the engrosser, does he not?—Yes.

"And pays a fee to each counsel in proportion to the length of the brief?—Yes.

"Now, suppose that the attorney gains by the whole of this process in proportion to the length of the brief, is not his gain by this only a small part of the costs to which the length of the brief puts the client?—It is only a part.

"He is paid in proportion to the length of the brief, but the client pays, besides that, for the copying of it by the engrosser, and he pays also the fees of counsel?—Yes, no doubt.

"All of which is quite independent of the profit of the attorney?

"Yes; it is not from the fee, but it is from the copying.

"Does not the length of the brief in many cases tend very little to help the counsel in doing the client's business?

"That depends entirely upon circumstances; I think there is a temptation to put much matter in the brief which would not otherwise be there; it is too much to say that that is always the case.

"In many cases, is not the counsel very little aided by the great length of the brief?—I do not know.

"Does it not take longer time to read it, and he is not much more likely to be confused by it?—Each case must depend upon its circumstances.

"What system would you recommend in lieu of that?

"I am not prepared, off-hand, to recommend anything; the only thing that occurs to me is, that there is a great proportion of the business to which a sort of per centage might be applied, as is in use in Scotland, and I believe also in

France; it requires much care and much attention, and much consideration, but I do not think it would be impossible, though it would be difficult, to devise a much better plan than we have now in Common Law or Chancery. You must give a large proportion in the shape of instructions, and allow for the trouble in the shape of instructions for brief; they do that in Common Law, but in the Court of Chancery they do not."

Mr. Commissioner Fane's examination comprises the following recommendations:

"Does anything occur to you with respect to the remuneration to solicitors?

"I have long thought, as all the witnesses seem to have thought, that the present system was the very worst that could be devised; that it was impossible there could be a worse. I have now lying before me a paper, which I printed in the year 1840, in which I suggested that probably the best mode of finding out a better plan for remunerating solicitors would be to issue a commission to certain solicitors of London, selecting such as were of opinion that a plan of remuneration better than the present could be devised, and authorising them to prepare a plan. It has occurred to me, that it might be a better plan than the present to leave it to the solicitors to make their own charge, according to their own estimate of what their own labour was worth, and to provide this protection against an excessive charge; that they should deliver their bills once in every three months to their clients: and that if the bill were not delivered on or before the last day of the fourth month, it should become a debt of honour, and one that could not be enforced. The practical effect of that, I think, would be, that they would have the strongest possible motives for not disgusting their clients by excessive charges, and that would be a real check.

"When you suggest that an attorney should estimate the value of his own services, and give in his own claim, you mean that that should go before some proper authority, such as the Taxing Master, or some other authority, to ascertain whether it was too much?

"I entertain great doubt upon that point; I think not; I believe that the effect of the system which I propose would be, to induce solicitors to act fairly and honestly by their clients, and furnish a remedy if they did not.

"There is no doubt that the difference between an attorney and all other professional men is, that there is a taxation of his bill, to which he alone is subjected?

"I admit that taxation does operate as a protection; but I also assert that the taxation injures indirectly more than it protects directly. And if once you adopt the system of taxation, then of necessity it follows that there must be some test to tax by, and though some persons have said that you can find some test to tax by other than length, I believe that in the long run any plan of taxation will always degenerate into taxation by length. If the amount to be

allowed is not to be tested by length, it must be tested by the supposed value of the solicitor's services, and no Taxing Master can value a solicitor's services. I think in the long run, that the best thing will be to leave the thing entirely to a solicitor's conscience, checked by the feeling that he must show the results of that conscience once in every three months.

"Might not a scale of fees without reference to length be established?"

"A scale of fees would be a matter of great detail; I suppose that if it were referred to very skilful solicitors, it might be effected; but it would be very difficult. The variety in the different cases is so great, that I think it would be hardly possible to lay down a scale beforehand. However, if such a plan were thought of, certainly the best mode of arriving at a practical result would be to refer the question to a commission consisting of solicitors."

Master *Brougham* being asked his opinion with respect to the mode of paying solicitors, said,—

"It has been already stated by Mr. Field and by Mr. Gregory, that the present mode of paying solicitors and the present mode of framing a bill of costs is exceedingly objectionable; and the suggestion that they have made, and in which I entirely concur, is, that if any plan could be adopted for paying them by the job, as it were, instead of by the work in detail, it would be a very great improvement. On that account they consider the clause in this bill, which gives the Master the power to pay by the job, one of the most useful provisions contained in it; more especially, because I consider that the subject-matter which would be under the consideration of the Master, affords a very simple and a very easy method of trying this scheme of payment; because, in dealing with administrations, you always have a fund which you can resort to, and upon which you may establish by some scale or otherwise, some rule of per centage. This has been tried to a certain extent, in the Winding-up Acts; and though the cases have, in very few instances, arrived at that stage at which the payment to a solicitor was to be effected, there are one or two instances in which it has been acted upon usefully."

We shall take an early opportunity of laying before our readers the scale of charges made by the practitioners in Scotland, as well for conveyancing as for Court business.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

EXPENSES OF PROSECUTIONS.

14 & 15 VICT. c. 55.

So much of 7 G. 4, c. 64, s. 23, as to expenses of attendance before examining magistrate, &c. repealed; s. 1.

Power of Courts to allow expenses in

prosecutions for certain misdemeanors extended to other misdemeanors; s. 2.

Parties bound by recognizance to prosecute or give evidence on bills of indictment for common assaults to be allowed costs as in cases of felony; s. 3.

So much of 7 G. 4, c. 64, as empowers Quarter Sessions to make regulations as to costs and expenses, repealed; s. 4.

Secretary of State may make regulations as to costs, expenses, and compensations, and certificates to be granted by the examining magistrates; s. 5.

Expenses and compensations to be ascertained according to such regulation, and magistrates' certificate not to be conclusive; s. 6.

Act not to interfere with payments in respect of extraordinary courage, diligence, and exertions; s. 7.

Powers given to judges by 7 G. 4, c. 64, to order payments in respect of the apprehension of certain offenders extended to Courts of Sessions of the Peace: s. 8.

Clerks of the peace, &c. may be paid by salaries in lieu of fees; s. 9.

Certain business may be excepted in fixing the salaries; s. 10.

Clerks paid by salaries to account for fees; s. 11.

Fees may be remitted by justices; s. 12.

So much of 4 & 5 Wm. 4, c. 36, as restrains justices of London, &c. from trying certain offences, &c. repealed. Such repeal not to give power to try offences restrained from being tried under 5 & 6 Vict. c. 38; s. 13.

Deputy to assistant judge of the Middlesex Session need not be in the Commission of the Peace; s. 14.

As to powers of Court of Quarter or General Sessions for Middlesex for dividing such Sessions. When power exercised the assistant Judge to appoint a deputy to preside as Chairman with the Justices appointed to sit apart; s. 15.

Presence of one of the justices so set apart not essential to formation of Court; s. 16.

So much of 9 Geo. 4, c. 43, and 6 & 7 Wm. 4, c. 12, as exempts Middlesex repealed; s. 17.

11 & 12 Vict. cc. 42 and 43. By whom warrants to be backed in the Channel Islands; s. 18.

In certain counties of cities and towns prisoners may be committed, and tried at assizes held for adjoining county; s. 19.

Justices to declare when gaols or houses of correction are fit prisons for persons committed for trial; s. 20.

Prisoners so committed to be removed to county gaol previous to trial; s. 21.

Prisoners while under removal to be deemed in proper legal custody; s. 22.

The provisions of 38 Geo. 3, c. 52 and 51 Geo. 3, c. 100, as to execution of sentences, and as to costs, extended to this act; s. 23.

What to be deemed the next adjoining county; s. 24.

Extent of act; s. 25.

The clauses of the act are as follow:—

An Act to amend the Law relating to the Expenses of Prosecutions, and to make further Provision for the Apprehension and Trial of Offenders, in certain cases.

[1st August, 1851.]

Whereas by the act of the 7 G. 4, c. 64, certain provisions were made relating to the allowance of costs, expenses, and compensations to prosecutors and witnesses in cases of prosecutions for felonies and certain misdemeanors therein mentioned, and the regulation and ascertaining of such costs and expenses, and relating to the allowance of compensation to persons who may have been active in the apprehension of offenders or persons charged with offences; and provisions have been made by other acts relating to costs, expenses, and compensations in cases of prosecutions in respect of the offences therein mentioned: And whereas it is expedient to amend the law relating to costs, expenses, and compensations in cases of criminal prosecutions: Be it therefore enacted, That,

1. So much of sect. 23 of the said act of the 7 G. 4, c. 64, as provides that in cases of misdemeanor the power of ordering the payment of expenses and compensation shall not extend to the attendance before the examining magistrate, shall be repealed.

2. All the provisions of the said act of the 7 G. 4, as amended by this act, authorising and empowering Courts to order payment of costs and expenses, and compensation for trouble and loss of time, in cases of the several misdemeanors enumerated in sect. 23 of the said act of Geo. 4, and concerning orders for payment of such costs, expenses, and compensation, and the payment thereof, and all the provisions of any other act for, concerning, or applicable to the payment of such costs, expenses, and compensation in cases of the said misdemeanors, shall extend and be applicable in the case of any of the misdemeanors herein-after mentioned; namely, unlawfully and carnally knowing and abusing any girl being above the age of 10 years and under the age of 12 years; unlawfully taking or causing to be taken any unmarried girl, being under the age of 16 years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her; conspiring to charge any person with any felony, or to indict any person of any felony; conspiring to commit any felony.

3. And whereas by an act of the 9 G. 4, c. 31, it is enacted, that where any person shall unlawfully assault or beat any other person, it shall be lawful for two justices of the peace, upon complaint of the party aggrieved, to hear and determine such offence; and it is by the said act provided, that in case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is from any other circumstance a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as they would have done before the passing of the said act: And whereas it is expedient that Courts before whom such indictments shall be tried shall have power to order payment of costs to parties so bound by recognizance to prosecute or give evidence: Be it enacted, That in every case of assault so brought before such justices for summary decision in which the justices shall be of opinion that the same is a fit subject for prosecution by indictment, and shall thereupon bind the complainant and witnesses in recognizance to prosecute and give evidence at the Assizes or Sessions of the Peace, every such Court is hereby authorised and empowered at its discretion to order payment of the costs and expenses of the prosecutor and witnesses so appearing before such Court under such recognizance, together with compensation for their trouble and loss of time, in the same manner as Courts are authorised and empowered to order the same in cases of felony.

4. So much of the said act of the 7 G. 4, c. 64 as empowers the justices of the peace of any county, riding, or division, or of any liberty, franchise, city, town, or place chargeable with costs and expenses as therein mentioned, in Quarter Sessions assembled, to establish and alter regulations as to the rate of any costs and expenses to be allowed by virtue of that act, shall be repealed: Provided always, that all such regulations in force at the time of the passing of this act shall continue in force until, revoked, or until regulations in relation to the matter thereof are made under the powers of this act.

5. It shall be lawful for one of her Majesty's principal Secretaries of State to revoke any regulations made under the provision herein-before repealed, and to make regulations as to the rates or scales of payment of all or any costs, expenses, and compensations to be allowed or ordered to be paid under the said act or any other act or this act to prosecutors and witnesses, and to persons attending the Court in obedience to any recognizance or subpoena, in cases of criminal prosecutions, and (except as herein-after mentioned) to persons who may have been active in or towards the apprehension of persons charged with offences, and also regulations as to the rates or scales of payment according to which certificates may be granted by the examining magistrate or magistrates in respect of the expenses of any prosecutor, or

witness or witnesses for the prosecution, or other person, of attending before such magistrate or magistrates, and of any compensation for trouble and loss of time therein, in any case where any Court or judge is empowered under the said act of the 7 G. 4, or any other act or this act to order payment of such expenses or compensation, and concerning the forms of such certificates and the details or particulars to be inserted therein of the expenses, trouble, and loss of time to which such certificates relate, and it shall be lawful for one of her Majesty's principal Secretaries of State from time to time to alter any such regulations, or make new regulations in relation to any of the matters aforesaid, and such regulations for the time being shall be binding on all Courts and persons whomsoever.

6. Where any Court or judge empowered under the said act of the 7 G. 4, or under any other act or this act, in this behalf, shall order payment to any prosecutor, or witness or witnesses for the prosecution, or to any person attending the Court in obedience to any recognisance or subpoena, in the case of any prosecution for felony or any misdemeanor or offence, of any costs or expenses incurred, or of any compensation for trouble or loss of time, or order payment (except as herein-after mentioned) to any person who may appear to have been active in or towards the apprehension of any person charged with any offence of compensation for expenses, exertions, and loss of time in or towards such apprehension, the amount of such costs, expenses, or compensation shall be ascertained by the proper officer of the Court according to the regulations made under this act; and where the expenses and compensation in respect of attending before any examining magistrate or magistrates are so ordered to be paid, such expenses and compensation shall also be ascertained by the proper officer of the Court according to such regulations, but the amount thereof as so ascertained shall not exceed the amount mentioned in the certificate of the examining magistrate or magistrates, and, save as aforesaid, the certificate of any examining magistrate or magistrates shall not be conclusive as to the amount to be allowed for expenses of attendance before him or them, or for compensation for trouble or loss of time therein.

7. Provided always, That nothing in this act or in any regulations under this act shall interfere with or affect the power of any Court to order payment to any person who may appear to such Court to have shown extraordinary courage, diligence, or exertion in or towards any such apprehension as herein-before mentioned of such sum as such Court shall think reasonable and adjudge to be paid in respect of such extraordinary courage, diligence, or exertion.

8. And whereas by the said act of the 7 G. 4, c. 64, any Court of oyer and terminer and gaol delivery, and other Courts therein mentioned, are empowered to order compensation to be paid to persons who shall appear to the Court

to have been active in or towards the apprehension of any person charged with murder or with any other of the crimes therein mentioned: And whereas it is expedient to extend such power to Courts of Sessions of the Peace: Be it enacted, That when any person appears to any Court of Sessions of the Peace to have been active in or towards the apprehension of any party charged with any of the offences in the said enactment mentioned which such sessions may have power to try, such Court of Sessions shall have power to order compensation to be paid to such person in the same manner as the other Courts in the said enactment mentioned; provided that such compensation to any one person shall not exceed the sum of 5*l.*, and that every order for payment to any person of such compensation be made out and delivered by the proper officer of the Court unto such person without fee or payment for the same.

9. And whereas it may be expedient to authorise the payment of clerks of the peace and such other clerks as herein-after mentioned by salaries instead of fees: Be it enacted, That it shall be lawful for the justices of the peace at their General or Quarter Sessions for the several counties, ridings, divisions of counties, and liberties throughout England and Wales, notice being given at the preceding Quarter Sessions that a motion will be made for such purpose, and the council or other governing body in every borough in England and Wales, from time to time, if they see fit so to do, to recommend to one of her Majesty's principal Secretaries of State that the clerks of the peace, the clerks of Special and Petty Sessions, and the clerks of the justices of the peace within their several jurisdictions, or any of such clerks as aforesaid, be paid by salaries in lieu of fees and other payments, or where any such clerks are for the time being paid by salaries, by virtue of any order made under this act or otherwise, to recommend that the amounts of all or any of the salaries for the time being payable be reconsidered, or that all or any of such clerks for the time being paid by salaries be paid by fees in lieu of salary, and where payment by salary in lieu of fees or the reconsideration of the amounts of any salaries is recommended, to state the amount of salary which in the opinion of such justices, council, or governing body should in each case be paid; and every such recommendation being signed by the chairman of the Court of General or Quarter Sessions, or the mayor or other head officer of the borough, shall be transmitted to the Secretary of State; and it shall be lawful for such Secretary of State, when any such recommendation is so made to him, by order under his hand, if he so think fit, to direct that all or any of the clerks to which such recommendation refers be paid by salary, and to fix the amount of salary to be so paid, or vary the amount of salary for the time being payable to any such clerk, or to direct that any such clerk for the time being paid by salary be paid by fees in lieu of salary; and such Secretary of State

shall cause copies of every order made under this enactment affecting any clerk of the peace, or any clerks of Special Sessions or Petty Sessions, or clerks to the justices within the district of any clerk of the peace, to be transmitted to such clerk of the peace, to be by him distributed, where occasion shall require, to such other clerks as aforesaid; and the salary for the time being payable to any such clerk under any such order shall be paid out of any county rate or rate in the nature of a county rate made in the county, riding, division, or liberty, or out of the borough fund of the borough, as the case may be, for or in which such clerk of the peace or other clerk to whom the same is payable is appointed or acts: Provided always, that in fixing the amount of any salary to be paid to any clerk of the peace or other clerk appointed before the passing of this act regard shall be had to the tenure of his office and to his rights in respect thereof, but no clerk of the peace or other such clerk as aforesaid appointed after the passing of this act shall be entitled to any compensation on account of any reduction of his emoluments occasioned by any order made under this enactment: Provided also, that no order shall be made in pursuance of any recommendation of the council or governing body of any borough in relation to the mode of payment or the amount of salary of any such clerk other than the clerk of the peace for such borough, unless the justices of such borough at a meeting of such justices approve of such recommendation, and such approval be certified to such Secretary of State, under the hand of the chairman of such meeting.

10. Provided that any such Court of Sessions, or council, or governing body may, where they see fit, recommend that any description (to be specified in the recommendation) of the business of any clerk whom they may recommend to be paid by salary should not be included in fixing the amount of such salary, but that such clerk should be remunerated for the same by such fees or other payments as may be payable to him in respect thereof; and where any order is made by the Secretary of State in pursuance of such recommendation as last aforesaid, such clerk shall be entitled to receive, for his own use, the like fees or payments in respect of the business in such recommendation specified in this behalf as he would be so entitled to receive if not paid by salary; and, save as aforesaid, where any clerk is paid by salary under any order made by virtue of this act, such salary shall include and be deemed the remuneration for all business which such clerk may, by reason of his office, be called on to perform; and no other payment shall be made for any such business, or for or to a deputy of any such clerk.

11. Save as herein-before provided, all the fees which any such clerk as aforesaid would have been for the time being entitled to receive to his own use if such order had not been made shall, so long as any order for payment of such clerk by salary in lieu of fees is in force,

be by him received and paid in any county, riding, division, or liberty to the treasurer in aid of the county rate or rate in the nature of a county rate of such county, riding, division, or liberty, and in any borough to the treasurer in aid of the borough fund, and such fees shall be accounted for from time to time in such manner and under such regulations as the justices at Quarter Sessions, or in any borough the council or other governing body, may direct.

12. Where any clerk is paid by salary by virtue of any order made under this act, any justices or justice before whom any proceeding is had, whereon a fee is payable which should be accounted for by such clerk under this act, or before whom any person is summoned for nonpayment of any such fee, may remit such fee in whole or in part for poverty or other reasonable cause, in their or his discretion, and in every such case the justices or justice by whom any fee is wholly or in part remitted shall cause an entry to be made, in a book or books to be kept for that purpose by such clerk, of the nature and amount of the several fees so remitted, and of the reason for the remission in such case, which entry shall be signed by the justice, or two or more of the justices authorizing such remission, and shall be a sufficient voucher to discharge the clerk therefrom.

13. And whereas by the act of the Session holden in the 4 & 5 Wm. 4. c. 36, it was enacted, that the justices of the peace acting in and for the cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey, should not, at their respective General or Quarter Sessions of the peace, or any adjournment thereof, try any person or persons charged with any of the offences therein mentioned committed or alleged to be committed within the limits of that act: Be it enacted, That the said recited enactment shall be repealed: Provided always, that such repeal shall not be construed to give authority to the said justices of the peace to try any person or persons for any offence which the justices of the peace acting in and for any county, riding, division, or liberty are restrained from trying under the act of the Session holden in the 5 & 6 Vict. c. 38.

14. So much of the act of the Session holden in the 7 & 8 Vict. as requires that any person to be appointed a deputy to the assistant judge of the Court of the Sessions of the peace for the county of Middlesex should be in the commission of the peace for the said county, and qualified by law to act as a justice of the peace, shall be repealed, but any person, being a squire or barrister-at-law of not less than 10 years standing, may, in the cases and with the allowance and in the manner therein mentioned, be appointed such deputy.

15. The Court of Quarter or General Sessions or adjourned Sessions of the Peace for the county of Middlesex shall possess the same powers for dividing such Court of Quarter or General or Adjourned Sessions as are now possessed by the Courts of Quarter and

General and Adjourned Sessions of the Peace in counties in which there is an order in force for the appointment of a permanent chairman and deputy chairman; and whensoever such Court shall exercise such power the assistant judge shall appoint a person qualified to act as deputy assistant judge to preside as chairman with the justices who shall be appointed to sit apart; Provided always, that the name of the person who shall be so appointed shall at some previous time have been transmitted to and approved of by one of her Majesty's principal Secretaries of State as a fit and proper person to be from time to time appointed as such deputy assistant judge.

16. The presence of one of the justices so as aforesaid set apart shall not be essential to the formation of the Court in which such deputy assistant judge shall preside, but the jurisdiction of such justices shall not be in any way lessened by such appointment.

17. So much of an Act of the 9 Geo. 4, c. 43, and of an act of the Session holden in the 6 & 7 Wm. 4, c. 12, as enacts that nothing therein contained shall extend to the county of Middlesex, shall be repealed, and the said acts shall be construed and take effect as if the county of Middlesex had not been excepted from the operation thereof.

18. And whereas by sect. 13 of the act of the Session holden in the 11 & 12 Vict. c. 42, provision is made for indorsing such warrants as therein mentioned by any officer within any of the Isles of Guernsey, Jersey, Alderney, and Sark, who shall have jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders, and other provisions are made in the same act, and in the act of the same year of her Majesty, c. 43, by reference to the enactment of the said section, and doubts have arisen by whom warrants should be endorsed in the said isles pursuant to the said provisions: Be it enacted, That the bailiffs of Jersey and Guernsey respectively, or in their respective absence the lieutenant bailiffs of such islands respectively, within their respective bailiwicks or jurisdictions, the judge of Alderney, or in his absence any jurat of such island within such island, and the seneschal of Sark, or in his absence his deputy within such island, shall have all such power and authority to indorse warrants as by the said acts respectively is given or expressed or intended to be given to any officer within any of such isles having jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders, and for such purpose shall have authority to administer an oath, and all the provisions of the said acts shall be construed as if the officers authorized to indorse warrants by this enactment had been so authorized by the said section of the first-mentioned act of the 11 & 12 Vict.

19. Whenever any justice or justices of the peace, or coroner acting for any county of a city or county of a town corporate within which her Majesty has not been pleased for five years, next before the passing of this act, to direct a

commission of oyer and terminer and gaol delivery to be executed, and until her Majesty shall be pleased to direct a commission of oyer and terminer and gaol delivery to be executed within the same, shall commit for safe custody to the gaol or house of correction of such county of a city or town any person charged with any offence committed within the limits of such county of a city or town not triable at the Court of Quarter Sessions of the said county of a city or county of a town, the commitment shall specify that such person is committed pursuant to this act, and the recognizances to appear to prosecute and give evidence taken by such justice, justices, or coroner shall in all such cases be conditioned for appearance, prosecution, and giving evidence at the Court of oyer and terminer and gaol delivery for the next adjoining county; and whenever any such person shall be so committed, the keeper of such gaol or house of correction shall deliver to the judges of assize for such next adjoining county a calendar of all prisoners in his custody so committed, in the same way that the sheriff of the county would be by law required to do if such prisoners had been committed to the common gaol of such adjoining county; and the justice, justices, or coroner by whom persons charged as aforesaid may be committed, shall deliver or cause to be delivered to the proper officer of the Court the several examinations, informations, evidence, recognizances, and inquiries relative to such persons at the time and in the manner that would be required in case such persons had been committed to the gaol of such adjoining county by a justice or justices, or coroner, having authority so to commit, and the same proceedings shall and may be had thereupon at the sessions of oyer and terminer or general gaol delivery for such adjoining county as in the case of persons charged with offences of the like nature committed within such county.

20. It shall be lawful for the justices of the peace, at their General or Quarter Sessions for any county, riding, or division, by order made for that purpose, to declare that any gaol or house of correction for such county, riding, or division is a fit prison for persons committed for trial at the assizes for such county, or for the county of such riding or division; and every such order shall be signed by the chairman of such sessions, and transmitted to one of her Majesty's principal Secretaries of State; and in case such Secretary of State see fit to approve such order, then, after the approval thereof under the hand of such Secretary of State, it shall be lawful for any justice or justices of the peace, or coroner, acting for such county, riding, or division, to commit for safe custody for trial at the next assizes, to such gaol or house of correction, any person charged with any offence triable at the assizes for such county, or for the county of such riding or division; and the commitment shall specify that such person is committed under the authority of this act; and the recognizances to appear to prosecute and give evidence taken by

such justice, justices, or coroner shall in all such cases be conditioned for appearance, prosecution, and giving evidence at the Court of oyer and terminer and gaol delivery for the county: and the keeper of such gaol or house of correction shall deliver to the judges of assize a calendar of all prisoners in custody for trial at such assizes, in the same way that the sheriff of the county would be by law required to do if such prisoners had been committed to the common gaol of such county; and the justice, justices, or coroner by whom persons charged as aforesaid may be committed shall deliver or cause to be delivered to the proper officer of the Court of Assize the several examinations, informations, evidence, recognizances, and inquisitions relative to such persons at the time and in the manner that would be required in case such persons had been committed for trial as aforesaid to such common gaol, and the same proceedings shall and may be had thereupon at the sessions of oyer and terminer or general gaol delivery for such county as in the case of persons so committed to such common gaol.

21. All persons who may under the authority of this act be committed to the gaol or house of correction of any county of a city or county of a town corporate for trial at the assizes to be holden for the next adjoining county, or to any gaol (other than the common gaol of the county) or house of correction for any county, riding, or division for trial at the assizes for such county, or for the county of such riding or division, shall in due time, without writ of *habeas corpus*, or other writ for that purpose, be removed by the gaoler or keeper of such gaol or house of correction, with their commitments and detainers, to the common gaol of such county, in order that they may be tried at the assizes to be holden for such county, and such removal shall not be deemed or taken to be an escape.

22. Every prisoner so removed shall, for and during the time of such removal, and for and during the time of his being removed back, to the gaol or house of correction from which he may have been brought, when and as often as he shall for any reason be so removed back, and also for and during such time as he may be detained in the county gaol, and until he shall be delivered by due course of law, be to all intents and purposes deemed and considered to be in the proper legal custody, notwithstanding he may in effecting such removal have been taken or detained out of the jurisdiction of the county of a city or town, or out of the jurisdiction of the county, riding, or division, to the gaol or house of correction of which he may have been originally committed, into any other jurisdiction, or out of the county to the common gaol of which he is removed into or through any other county or division of a county; and no action or other proceeding shall or may be maintained by such prisoner, or by any other person, against the gaoler or keeper of the gaol or house of correction from which such prisoner is removed, or against the

gaoler or keeper of the common gaol of the county, by reason or in consequence of such prisoner having been taken out of the jurisdiction of such county of a city or town, county, riding, or division, from the gaol or house of correction of which such prisoner is removed, into any other jurisdiction, or out of such county to the common gaol of which he is removed into or through any other county or division of a county.

23. All the provisions of the act of the 51 G. 3, c. 100, applicable to convictions in pursuance of the provisions of the act of the 38 G. 3, c. 52, and to the execution of the sentences passed upon any convicts on such convictions, and all the provisions of the said acts respectively concerning the payment of expenses, shall be applicable in all cases of persons who may be tried in or removed for trial to any adjoining county in pursuance of the provisions of this act, in like manner as in cases of persons tried in or removed for trial to any adjoining county in pursuance of the provisions of the said act of the 38 G. 3.

24. For the purposes of this act the counties named in the second column of Schedule (C.) to the act of the Session holden in the 5 & 6 Wm. 4, c. 76, shall be considered next adjoining the counties of cities and towns corporate in the first column of the same Schedule in conjunction with which they are respectively named.

25. This act shall not extend to Ireland or to Scotland.

INCORPORATED LAW SOCIETY.

REPORT OF THE COUNCIL TO THE ANNUAL GENERAL MEETING.

19th June, 1851.

[Continued from p. 401, ante.]

II. PROPOSED AMENDMENTS IN PRACTICE.

Common Law.—Complaints of the expense and delay of actions in the Common Law Courts have always prevailed, and particularly during the last twenty years. Numerous Statutes have been passed and Rules of Court published, and a Commission was issued in May last year "to Inquire into the Process, Practice, and Pleading, in the Superior Courts, and the Costs and Expenses incident thereto." In October last the Commissioners invited the suggestions of the Council, and sent them copies of such as were already under their consideration, and requested that they should be distributed amongst the Members of the Society. Such distribution accordingly took place, and copies were also placed in the Hall for general inspection, and the Members were invited to send such remarks thereon as they might deem necessary. The Council bestowed much time in the consideration of the proposed alterations, received several valuable suggestions from Members of the Society, and transmitted to the Commissioners such observations as appeared necessary; and they deemed it

proper to state that, whilst they were desirous of giving their best assistance in forwarding any wise and well-considered measures of legal reform, and that the personal interests of the Attorneys should not stand in the way of such reform, they urged that, when the question of costs should come under the consideration of the Commissioners, due regard should be had to the fair remuneration of this branch of the Profession for the labour and responsibility incurred.

Much of the difficulty which the Commissioners apparently experience in the prosecution of their inquiries might have been obviated if two or more Solicitors of eminence and experience had been joined in the Commission.

Equity.—Notwithstanding the various amendments made in the jurisdiction and practice in Equity of late years, and particularly by the Orders of 1845 and 1850, and the last act of Vice-Chancellor Turner for diminishing expense and delay, there still continues an equal, if not greater, degree of complaint against the Court of Chancery.

The evils resulting to the Profession, as well as to the public at large, from the admitted defective state of the practice of the Court of Chancery induced the Council in November last to refer the subject to a Committee, with a view of originating some measures for the removal of those evils. The proceedings of the Committee were suspended in consequence of the issuing of the Commission on the 19th December last to inquire into the Process, Practice, and System of Pleading in the Court of Chancery; but a feeling prevails very generally amongst the body of solicitors, that, having regard to the constitution of that Commission, and to the practical nature of the inquiry, it was expedient that an opportunity should be afforded to the solicitors generally to consider and digest the measures which may appear to them to be necessary for improving a practice with the details and working of which they must be peculiarly familiar.

The Council, therefore, have authorised their Committee to proceed to the immediate consideration of this important subject: and to report upon it, and that it may be the more effectually accomplished they authorised the Committee to invite the co-operation of other Solicitors, who might be willing to give their aid in the proposed investigation.

A Committee of fifteen of the Council and fifteen other solicitors have accordingly been formed. A circular has been addressed to all the solicitors in London and to the provincial Law Societies, requesting any suggestions which may have occurred to them calculated to remedy the defects complained of.

The inconvenience of holding the *Sittings in Chancery at Westminster*, during Term time, has often been the subject of observation; and the Council have addressed the Lord Chancellor on the subject, representing that not only the chambers of Counsel, but the offices of four-fifths of the Solicitors practising in Equity,

are situated in the neighbourhood of Lincoln's Inn; and considering also the great increase of business before the Masters, requiring the attendance of Counsel and Solicitors, it has been urged that the sittings should in future be held in Lincoln's Inn.

The Council still bear in mind the wish of the general body of the Profession, that all the Courts should ultimately be removed to the vicinity of the Inns of Court.

The delays in the offices of the *Masters in Chancery*, which had long been the subject of complaint, were attempted to be remedied under the Orders of June, 1850, in several of the offices, by daily Cause Lists; but this alteration, which no doubt was well intended, has produced much inconvenience, and occasioned greater expense, and more loss of time, than existed under the old system.

The injury to the Suitors, and the inconvenience to the Solicitors, of the holidays and limited hours of attendance at the *Accountant-General's* office, have again been represented to the Court. And it is expected that, amongst other improvements, this grievance will be remedied.

Conveyancing.—In the department of Conveyancing Practice, the Council have had under their consideration, not only several questions arising between Members of the Society and other Solicitors on the established practice of the Profession; but also many matters on which differences of opinion had arisen, not strictly coming within a precise usage, but which have been submitted to the decision of the Council. When the facts have been concisely stated, and the question clearly brought before them, the Council have been willing to give their opinion, and thus the parties have been saved from expense, and the Solicitors from inconvenience and controversy.

The Council have frequently had under their consideration the subject of Professional Remuneration in conveyancing transactions, and a suggestion has been made by some of the Provincial Law Societies, as well as individual practitioners, for establishing a proper percentage, or *ad valorem* charge, in lieu of the present payment by the length of deeds and other instruments. This, and other important questions affecting the interests of their brethren, will receive the best attention of the Council.

In this department, the Council may advert to the loss of time and responsibility incurred in searching for incumbrances at the *Middlesex Registry of Deeds*, and for wills and administrations at the *Prerogative Office, Doctor's Commons*. The Members are aware of the great defect of the indexes at both these offices. The Council have suggested an application to parliament for a continuation of the returns of receipts and expenditure in those offices, with a view to some practical remedy for the inconvenience complained of.

III. THE FEES AND RETAINERS OF COUNSEL.

The Council have continued to consider

such questions as have been submitted to them, relating to the Rules of Retainer, which were collected and reported to the Special Meeting of the Society in November, 1848; and they are happy to report that, for the most part, those Rules have been adhered to, and have prevented numerous differences, which formerly impeded business and created dissatisfaction.

The practice with respect to the fees of counsel on circuit has again been called to the attention of the Council. It appears that the clerks of some of the Members of the Bar have sought to alter, in several respects, the former usage. In addition to the facts noticed at the last meeting, it appears that on some of the circuits a new rule prevails,—that, in all cases, whether defended or not, the plaintiff is required to engage two counsel, although the leader is not a Queen's Counsel. It is the understood practice that the pleadings must be opened by a junior; but where the plaintiff's attorney thinks a Queen's Counsel unnecessary, it appears improper that he should be compelled to employ two counsel; especially at a time when a feeling so universally prevails, that the costs of trials should be reduced to as low a scale as consists with the safety and interests of the suitors.

The fees in parliamentary proceedings have also been under discussion; and whilst it has always been admitted that some of such fees should be of a higher amount than those in the Superior Courts, it would appear that, in other respects, the general scale adopted in these Courts should prevail. Claims, however, have lately been made for fees (independently of the question of amount) which are never allowed in the Common Law or Equity Courts. It has been felt to be the duty of the Council, when the Members of the Society have applied for their advice on such subjects, to consider the case, and give such opinion as appears to be consistent with professional usage, and just towards the client as well as the advocate.

Whilst they have thus interfered, when called upon, in regard to claims made on solicitors by the clerks of barristers, they have, on several occasions, investigated the complaints made against practitioners for the non-payment of fees, and have taken such course in the several cases as appeared to be just. And with a view to obviate these unworthy discussions, the Council cannot too strenuously recommend an adherence to the old practice of an actual payment of the fee on delivery of the brief, case, or other instructions.

In this portion of their Report, the Council are induced to state that a proposed bill has been communicated to them by some junior members of the Bar, for the purpose of extending the clause in the Attorneys' and Solicitors' Act, by which graduates of universities are entitled to be admitted on the Roll, after a clerkship of three years. Such bill provides that a barrister, at any time within four years from his call, should be at liberty to quit the Bar and be admitted on the Roll of Attorneys, after

a clerkship of two years only; with some enactments in regard to special pleaders and certificated conveyancers. The Council being of opinion that the proposed changes would not be beneficial, either to the public or to the Profession, have intimated their intention to oppose the measure.

IV. MAL-PRACTICE CASES.

During the last twelve months the Council have had under their consideration upwards of sixty complaints from parties aggrieved, either by attorneys, some of whom were duly certificated, but many practising without certificates, and individuals practising without any qualification whatever, by using the names of attorneys, and assuming to act as their clerks.

In several of these cases, the Council have not thought themselves justified in interfering at the expense of this Society,—it appearing to them that the local societies, or resident solicitors, or the parties aggrieved, should bear the burthen.

Several of the cases which the Council have deemed within their province are under investigation.

In one of them, a rule nisi was granted to strike the attorney off the Roll; and, on showing cause, the case has been referred to one of the Masters of the Court.

In the case of Mr. W. H. Barber's application for re-admission, which had been under the investigation of the Master for nearly twelve months, and argued before the Court during five days, the Court gave judgment soon after the last Annual Meeting, dismissing the application. Subsequently to that discussion, a meeting of solicitors at Liverpool was called on the part of Mr. Barber, at which Sir George Stephen presided; and resolutions were passed, reflecting on this Society for its opposition to Mr. Barber's re-admission. Immediately after the publication of these resolutions, the Liverpool Law Society, which includes amongst its Members almost all the eminent practitioners in that large and important town, convened a meeting, and passed resolutions, which were afterwards embodied in an Address to the Incorporated Law Society, and signed by the Members, individually, of the Liverpool Law Society, stating that, "having observed an advertisement in the public journals, importing that, at a public meeting of the solicitors at Liverpool," certain resolutions had been passed relative to Mr. W. H. Barber, and regretting "that any attempt should have been made to impede his full re-instatement in his position as a solicitor," deemed it their duty, as Members of the Profession in Liverpool, to assure the Council of the Incorporated Law Society that they did not participate in the sentiments thus expressed: on the contrary, in the language of a resolution passed at a meeting of the Law Society, they entertained the fullest confidence that, in all cases of interposition, by the Incorporated Law Society to prevent the admission of any person as an attorney, the Society has been solely actuated by considerations of duty

towards the Profession and the public; and that, in their recent opposition to the re-admission of Mr. W. H. Barber, they were satisfied that the Society had been guided alone by the same high principle.

The Council acknowledged the receipt of this Address, stating that it was highly gratifying to them that their conduct had met with the marked approbation of gentlemen eminently capable of appreciating the motives which had actuated the Council in the discharge of a painful, but imperative, duty; and they remarked, that before they came to the conclusion that the case of Mr. Barber should be represented to the Court, they weighed every circumstance, which made against him or in his favour, with scrupulous attention and impartiality. That the Council did not proceed upon light or insufficient grounds, was proved by the Report of the Master, and the judgment of the Court.

The application of Mr. Barber was renewed in Easter Term last, on additional affidavits, and stood over for consideration till Trinity Term, when the Court refused the application—the Lord Chief Justice Campbell concluding his judgment with the following observations:—“We wish it to be understood that this is our final judgment, which the misconduct of the individual has drawn down upon him, and which a due regard for the pure administration of justice has required us to pronounce.”

[To be continued.]

PROGRESS OF THE CHANCERY COMMISSIONERS.

WE have heard various accounts of the proceedings of the Chancery Commis-

sioners, but feel at liberty only to state that they have held numerous meetings and examined several witnesses. We may, of course, unobjectionably extract the following evidence of Vice-Chancellor Turner before the Select Committee of the House of Lords, on the 11th July, wherein it is stated, “that the Commissioners have considered it necessary to direct their attention to the system of taking evidence in the Court, and have examined a number of witnesses upon that subject, and have obtained information sufficient to enable them to determine what is right to be done upon it.”

It is also stated by Sir George Turner in his evidence, that the Commissioners had taken up the subject of “the Masters’ offices, and were then engaged” (11th July) “in fully considering what was to be done with respect to them.”

It may therefore be expected that an early report will be made on these important subjects of evidence and proceedings in the Masters’ offices, unless the Commissioners should postpone the statement of their opinions on those branches of their inquiry until they can make a general report; but we venture to say that it would be gratifying to the profession to learn the views of the Commissioners on the subjects referred to, without waiting for the entire report, which, comprising the pleadings and general practice of the Court, must necessarily be very voluminous.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

In re Bristol Charities, ex parte Corporation of Bristol. June 6, 1851.

CHARITY.—APPOINTMENT OF NEW TRUSTEES.—PUBLIC NOTICE OF MEETING TO NOMINATE.

The continuing and surviving trustees of charities, in which the public generally of Bristol were interested, nominated persons to supply vacancies in their number at a meeting of which no notice was given, and concealed the names of the persons so nominated, and the Master, on the reference to him upon their petition for the appointment of new trustees, reported as to their fitness. On the petition of the corporation the Court referred the matter back for review, giving leave to the corporation to attend before the Master by counsel on behalf of the public of Bristol generally, and dis-

missed the trustees’ petition for the confirmation of the report.

SEVERAL vacancies having occurred in the number of trustees to the above charities, the continuing and surviving trustees held a meeting to nominate persons to supply such vacancies, but it appeared that no public notice was given of the meeting. The Master had approved of the persons thus nominated upon the reference to him on a petition presented by the trustees, who now sought that the appointment might be confirmed. The corporation also presented a petition praying that the report might be referred back to be reviewed, with liberty to the petitioners to attend the Master.

R. Palmer and W. T. S. Daniel, for the corporation in support, said, that no personal objections were made to the parties nominated, but that as all the inhabitants had an interest in the due administration of the charities, they

should have a voice in the election of the new trustees.

J. Parker and W. M. James, for the trustees contra.

The Lord Chancellor said, that the trustees were bound to give public notice of the appointment of new trustees, and of the names of the persons nominated. The Master had consequently insufficient knowledge of the parties presented to him for his approval, and the report must be sent back to be reviewed, with leave to the corporation to attend by counsel on behalf of the public of Bristol generally—the petition of the trustees being refused.

Rolls' Court.

Hanbury v. Hussey. June 30, 1851.

TENANT IN COMMON OF MANOR.—DECREE FOR PARTITION UNDER 31 HEN. 8, c. 1, s. 2.

Held, that a tenant in common of "a manor" is entitled to a decree for a partition of the manor against his co-tenant under the 31 31 Hen. 8, c. 1, s. 2.

This bill was filed on behalf of the plaintiff, who was entitled as tenant in common to two-thirds of the manor, against the defendant, tenant in common of the other third, seeking a partition thereof.

Walspole, Q. C., and *Elmsley*, in support, cited 31 Hen. 8, c. 1, s. 2, which provides that "all joint-tenants and tenants in common, that now be, or hereafter shall be, of any estate or estates of inheritance in their own rights, or in the right of their wives, of any manors, lands, tenements, or hereditaments," "shall and may be coacted and compelled, by virtue of this present act, to make partition between them of all such manors, lands, tenements, and hereditaments," "by writ *De participatione facienda*, in that case to be devised in the King our Sovereign Lord's Court of Chancery, in like manner and form as co-parceners by the common laws of this realm have been and are compellable to do, and the same writ to be pursued at the common law," extended by the 32 Hen. 8, c. 32, to joint-tenants or tenants in common for term of life or years.

Rosdell Palmer, Q. C., and *T. W. Greene*, contra, on the ground no partition could be made of a simple manor referring to the 32 Hen. 8, c. 32, s. 2, which provides that "no such partition or severance hereafter to be made by force of this act, be, nor shall be, prejudicial or hurtful to any person or persons, their heirs or successors, other than such which be parties unto the said partition, their executors or assigns."

The Master of the Rolls decreed a partition.

Vice-Chancellor Knight Bruce.

Bullivant v. Bellairs. July 9, 1851.

ADMINISTRATION CLAIM.—ORDER ON FURTHER DIRECTIONS.—DIVISION OF PERSONAL ESTATE AMONGST PARTIES ENTITLED,

Upon the hearing on further directions of an

administration claim, an order was made for the division of the money to be produced by the personal estate, which consisted of mortgages, amongst the parties whom the Master had reported entitled thereto, without a further reference to the Master.

THE Master having reported as to the parties entitled to the personal estate of a testator, which consisted of various mortgages, upon a reference to him on an administration claim filed under the orders of April, 1850, the case now came on on further directions, and it was sought that a division of what might be produced by the personal estate should be made, without a further reference to the Master.

Metcalf, for the plaintiff; *C. M. Roupell and Batten*, for the defendants.

The Vice-Chancellor made a declaration in accordance with the Master's finding as to the parties entitled to the property, and directed the payment into Court of the balance found due from the administrator, and that the mortgages should be got in by the administrator under the Master's direction, and from time to time be divided among the parties entitled thereto, with liberty to apply—costs as between solicitor and client, to be paid out of the fund.

Vice-Chancellor Lord Cranworth.

Rawlins v. M'Mahon. Aug. 8, 1851.

MARRIAGE SETTLEMENT.—APPOINTMENT AMONG CHILDREN.—DEPRECIATION OF ESTATE.—ABATEMENT.

A sum of 12,000*l.* charged on *West India property* was, under the marriage settlement, settled on trust for the husband and wife for life, and after their decease for such children as they, or the survivor of them, should appoint, and in default of appointment among the children equally. The husband, after the death of the wife, appointed 1,715*l.* to one of the sons, with a proviso that such appointment should not preclude any further appointment to such son for the purpose of making his share equal to that of the others. Upon the death of the settlor, and the estate only producing 3,186*l.* 17*s.*, there being seven children surviving of the marriage, held, that the sum appointed was to be paid in the first place, and the residue to be apportioned among the other children.

By a deed of appointment in pursuance of a power contained in his marriage settlement over 12,000*l.*, Mr. William Wharton Rawlins appointed a sum of 1,715*l.* to William Augustus Rawlins, one of his sons, with a proviso that such appointment should not preclude any further appointment to such son for the purpose of giving him an equal share with the other children. The trust-fund, which was settled on trust for the settlor and his wife for life, and after their decease to such children as they or the survivor of them should appoint, and in

default of appointment, to the children equally had been reduced to about 3,186*l.* 17*s.*, in consequence of the depreciation of West Indian property on which it was charged. There were seven children surviving the marriage, and this bill was now filed on behalf of the other children against the trustees and W. A. Rawlins for the purpose of having the whole fund divided rateably among such surviving children, and that the sum appointed to W. A. Rawlins should abate *pro rata* with the depreciation of the trust-fund.

Bacon, Roll, Shapter, and Bagshawe, jun., in support; *Bethell and Speed*, contra.

The Vice-Chancellor said, that as in the event of the value of the trust-fund having been increased, W. A. Rawlins would not have been entitled, without a further appointment, to participate in such increase, the bill must be dismissed with costs.

Vice-Chancellor Turner.

Wright v. Woodham. July 31, 1851.

TURNER'S ACT.—SPECIAL CASE, LEAVE TO SET DOWN.—INFANT.

Leave refused to set down, by consent of the the parties, a special case under the 13 & 14 Vict. c. 35, in which an infant was interested, where such infant was not represented by counsel, although a special guardian had been appointed.

THIS was an application to set down a special case under the 13 & 14 Vict. c. 35, with the consent of the parties. It appeared that an infant was interested in the subject matter of the case, and that a special guardian had been appointed, but no separate counsel appeared for the infant.

Cankrien, in support.

The Vice-Chancellor, after referring to s. 13 of the act,¹ said, that leave could not be granted

¹ Which enacts that "when any married woman, infant, or lunatic is party to a special case, application may be made to the Court by motion for leave to set down the same, of which motion notice shall be given to every party to such case in whom, as executor, administrator, or trustee, any property in question therein is or is alleged to be vested in trust for or for the benefit of such married woman, infant, or lunatic, and also, if such application be not made by or on behalf of such married woman, infant, or lunatic, to such married woman and her husband, or to such infant, or to such lunatic and his committee, if any, as the case may be; and that upon the hearing of such motion the said Court may give leave to set down such case, if it shall be of opinion that it is proper that the question raised therein shall be determined thereon, and shall be satisfied by affidavit or other sufficient evidence, that the statements contained therein, so far as the same affect the interest of such married woman, infant, or lunatic, are true, but otherwise may refuse such application."

unless in the presence of counsel appearing for the purpose of protecting the interest of the infant, and directed the application to stand over for that purpose.

Court of Queen's Bench.

Duke of Brunswick v. Harmer. June 17, 1851.

COSTS OF FIRST TRIAL, WHERE PLAINTIFF OBTAINED VERDICT THROUGH PERJURY OF A WITNESS.

A rule nisi was discharged for payment by the plaintiff to the defendant of the costs of the first trial of an action for libel to which the Statute of Limitations was pleaded, where the plaintiff had obtained a verdict upon the evidence of one of his witnesses of a republication within the six years, and which evidence proving untrue, a new trial had been directed, at the trial of which the witness was not produced,—the fact of the plaintiff's being privy thereto not being supported by such evidence as would render him liable to an indictment for subornation of perjury.

THIS was a rule nisi granted on June 2 last, on the plaintiff to pay to the defendant the taxed costs of the first trial of the above cause. The action was brought in 1848 to recover damages for a libel which had been published in the *Weekly Dispatch* on September 19, 1830, and to which the Statute of Limitations had been pleaded. On the trial, the plaintiff obtained a verdict with 500*l.* damages upon a witness proving that he had purchased a copy of the paper at the office within the statuteable period. It appeared, however, that this evidence was false, and upon the new trial which had been directed the defendant obtained a verdict, the witness as to the republication not being produced, and it was now sought to indemnify the defendant from the costs of the first trial on the ground that the plaintiff was privy to such perjury, the witness having been seen to go into the plaintiff's house a few days before the second trial when it was said he could not be found.

M. Chambers, Q. C., and *Atherton* showed cause against the rule, which was supported by *Sir F. Thesiger, James, Q. C.*, and *Bosill*.

The Court (per *Patteson, Coleridge, and Erle, JJ.*,—dissentiente, *Lord Campbell, C. J.*) discharged the rule.

Court of Common Pleas.

Marshall v. York, Newcastle, and Berwick Railway Company. June 16, 1851.

ATTACHMENT FOR CONTEMPT FOR NON-ATTENDANCE IN OBEDIENCE TO SUBPENA.—WHERE ORIGINAL WRIT NOT PRODUCED.

The Court discharged a rule for an attachment against a witness for not attending in obedience to a subpoena on the trial of the action, where the original writ was not

produced to the witness on the service being effected of the subpoena, and the witness did not wilfully neglect to attend, but justified his non-attendance on the ground of such nonproduction; but as the witness had been informed by letter when the trial would take place and that his evidence could not be dispensed with, the rule was discharged without costs.

THIS was a rule nisi for an attachment granted on June 2 last against Lord Adolphus Vane for non-attendance as a witness in the above cause in obedience to a subpoena. The action was brought by his valet to recover the value of a portmanteau which the defendants' servants had lost, and owing to his lordship's absence the record had been withdrawn. The rule nisi had also been obtained on the ground of contemptuous words which had been used by him in reference to the Court, but the contempt in this respect was purged by the counter-affidavits that the words were used in reference to the process-server and not of the Court. A letter was written to his lordship informing him when the trial would take place, and that his evidence could not be dispensed with.

Peacock now showed cause, on the ground the original subpoena was not shown at the time of service, the copy being inclosed in an envelope which the process-server placed on his lordship's arm and which fell on the ground, referring to *Jacob v. Hengate*, 3 Dowl. P. C. 456.

Deaman in support.

The Court said, that as it appeared from the affidavits that the original subpoena had not been shown to Lord A. Vane, and that he had not wilfully neglected to attend, but because he believed he had not been personally served, the rule must be discharged, but without costs.

Court of Exchequer.

Williams v. Holdsworth. June 17, 1851.

COUNTY COURT.—COSTS OF INTERPLEADER SUMMONSES.—RULE TO QUASH ORDER FOR PAYMENT OF.

An order was brought up on *certiorari* of the judge of a County Court for payment by the plaintiff of the costs of 20 interpleader summonses which had been issued upon his giving the high bailiff notice of a lien of the bank of which he was manager on the defendant's vessel, which had been taken in execution under writs of *f. fa.* founded on separate judgments obtained by 20 different plaintiffs against the defendant. A rule was then granted to quash the order as bad. The Court enlarged the rule upon an understanding that the parties below would in the mean time abandon the order.

ONE of the defendant's ships having been seized under separate executions for the debts and costs upon judgments obtained by 20 plaintiffs against him in the Merionethshire County Court held at Dolgelly, the plaintiff, who was

manager of a bank at that place, gave notice to the high bailiff that the bank claimed to hold the bill of sale of the vessel, to secure an advance to the defendant of 68*l.*, and interpleader summonses were issued to the several claimants. The plaintiff, on behalf of the bank, having disclaimed at the hearing, an order was made that the vessel was the property of the defendant, and for payment by the plaintiff of 68*l.* 15*s.*, the costs of the proceedings. A rule nisi had therefore been obtained to quash such order, which had been brought up by writ of *certiorari*.

Atherton now showed cause against the rule, on the ground the Court had no power to grant the *certiorari*, 13 & 14 Vict. c. 61, s. 14.

Welsby, in support.

The Court, without giving any formal decision, enlarged the rule, upon the understanding that the order should, in the meantime, be abandoned.

Court of Bankruptcy.

(Coram Mr. Commissioner Goulbourn.)

Anon. Sept. 22, 1851.

COSTS OF WITNESSES IN BANKRUPTCY.

Held, that where a witness, was summoned from the country to be examined at a private sitting touching the affairs of a bankrupt, he was not entitled to be first paid his costs, but that after he has been sworn and there being no impropriety on his part, his expenses would be allowed, and the party summoning him must guarantee the payment.

A QUESTION arose in this case, whether a witness who had been summoned to attend to be examined at a private meeting, as to the affairs of the bankrupt, could refuse to attend unless his costs were first paid. It appeared he was called by the solicitor to the assignees generally to give evidence.

The Commissioner said, that where any doubt existed as to the position in which the witness might be, he was not entitled to be paid his expenses before he was examined, as it might turn out that he had concealed or improperly withheld property belonging to the estate in his possession, in which case his expenses would not be allowed. The expenses would of course be allowed after his examination, where there had been no impropriety on his part, and the payment would have to be guaranteed by the party summoning him.

(Coram Mr. Commissioner Fonblanque.)

In re Jackson. July 8, 1851.

BANKRUPT.—CONTINUANCE OF TRADING WHILST INSOLVENT.—SUSPENSION OF CERTIFICATE.

A second class certificate at the end of three months from the last examination, with protection in the meantime, was granted to a bankrupt, where it appeared his personal and domestic expenses were exceedingly

reasonable, but he had carried on his trading whilst in an insolvent state, and there was no proper cash book.

Lawrance appeared in support of the application of William Jackson, a house decorator in Orchard Street, Portman Square, for his certificate. It appeared the bankrupt was embarrassed in 1846, and had resorted to the expedient of pawning his plate, and there was a large sum put down for law charges, and there was no regular cash book.

Letts for the assignees, contra.

The Commissioner said, that the bankrupt had not failed through unavoidable losses and misfortunes, but carried on his trading too long and had recourse to pawning his plate, and there was a large sum entered for law charges. There was also no regular cash book, but the personal and domestic expenses were exceedingly moderate. A certificate would be granted of the 2nd class at the end of three months from the last examination.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF WILLS.

[Concluded from page 408.]

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lamacy, p. 147.

Courts of Equity:

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, pp. 204, 246, 265.

Law relating to Trustees, p. 285.

Evidence, pp. 306, 326.

Jurisdiction in Suits for Discovery, p. 347.

Law of Property and Conveyancing, pp. 366, 385.

Law of Wills, p. 406.]

HUSBAND AND WIFE.

2.—*Separate estate.—Satisfaction.*—A husband, with his wife's concurrence, received a legacy bequeathed upon trust for her separate use. Some time afterwards he made his will, bequeathing to her a much larger sum, and directing his executor, who was also his residuary legatee, to pay all his just debts: *Held*, first, that the concurrence of the wife in the receipt of the legacy by the husband was not a gift of it to him; secondly, the bequest by the husband to the wife was not a satisfaction of the wife's claim against his estate in respect of the first-mentioned legacy. *Rowe v. Rowe*, 2 De G. & S. 294.

Case cited in the judgment: *Bartlett v. Gillard*, 3 Russ. 156.

INTERLINEATIONS.

See *Erasures*.

LAPSE.

Non-execution of power.—A testator gave the residue of his real and personal estate to trustees, upon trust to pay the income to his wife for life, to her separate use, and after her decease, as to a moiety of the trust-funds, for such persons as she shall by deed or will appoint, and in default of appointment to her

next of kin, as in case of distribution of intestate's estates. The wife died in the testator's lifetime. *Held*, that the moiety had not lapsed. *Edwards v. Saloway*, 2 De G. & S. 345.

See *Election* 2.

LEGACY.

See *Condition*; *Husband and Wife*, 1.

LUNATIC.

See *Forfeiture*.

MISDESCRIPTION.

Subject matter of bequest.—A testator bequeathed "an annuity of 21*l.* per annum, which I purchased from J. G." The testator never had an annuity of that amount, but he had purchased from J. G., for 300*l.*, an annuity of 46*l.* per annum, and had insured the life of J. G. at an annual premium of 25*l.*, and had made an entry on his books of 300*l.* lent to J. G. at 7*l.* per cent., 21*l.*, 25*l.* premium on policy of insurance for 300*l.*" *Held*, that the whole annuity of 46*l.* passed to the legatee. *Purchase v. Shallis*, 2 H. & T. 354.

REMOTENESS.

1. *Pay and divide.*—Construction of a bequest in the form of a direction to "pay, apply, and divide" amongst children "when and as" they should severally attain 26.

A testator directed his trustees to pay and apply the interest of his residuary estate to his daughter for life, for the support of herself and issue; and, after her decease, to "pay, apply, and divide the principal" amongst all her children, "when and as" they should attain 26. There was a trust for maintenance during minority, and a power of advancement not so restricted. *Held*, that the children took immediate vested interests, and that the gift was not too remote. *Harrison v. Grimwood*, 12 Bear. 192.

2. *Substituted bequest.*—Testator gave the residue of his personal estate to trustees in trust to pay the income for the maintenance and education of his grandson, George Goring, and such other grandchildren, the children of his son, George Goring, during their lives, or life: and, after the decease of any or either of his said grandchildren, to pay the share of the income of any or either of them so dying, unto

their, his, or her issue, if any, until he, she, or they, respectively, attained the age of 25 years, and then to pay, transfer, and equally divide their parent's share of the residue between them, if more than one, and, if but one, then the whole to such one child absolutely. And, in case either of his grandchildren by his son George should die without having lawful issue at the time of his or her decease, and without having obtained a vested interest, he directed that the share or shares of him, her, or them so dying should go to the survivors or survivor of them, upon the same trusts as were therein-before mentioned.

George Goring, the grandson, died a bachelor, leaving three brothers and a sister surviving him.

Held, that they were entitled to their deceased brother's share of the income, for their lives; because, though the first gift was too remote, the subsequent one was intended to take effect, not by way of remainder, but by way of substitution. *Goring v. Howard*, 16 Sim. 395.

Cases cited in the judgment: *Longhead v. Phelps*, 2 Sir W. Blackst. 704; *Leake v. Robinson*, 2 Mer. 363.

3. Testator devised his real estates to trustees, in trust to apply the rents for the maintenance and support of his wife and his present and future grandchildren, during the life of his wife, and, on her death, to convey the estates to all his present and future grandchildren, as they respectively attained the age of 25 years, to hold to them, their heirs and assigns, as tenants in common.

Held, that the trust to convey was void for remoteness. *Blagrove v. Hancock*, 16 Sim. 571.

Cases cited in the judgment: *Leake v. Robinson*, 2 Mer. 363.

4. Gift of residuary estate.—A gift of residuary estate in trust for such child or children of A., as being a son or sons should live to attain the age of 25 years, or being a daughter or daughters should live to attain that age or marry, equally to be divided between them, if more than one; but if but one, then the whole to that one, their, his, or her heirs, executors, administrators, or assigns, according to the nature and quality thereof, provided that if any of them should die under such age or time as aforesaid, leaving issue him or her surviving, such issue should take the same share as his, her, or their parents, attaining such age as aforesaid would have done; with provision for applying the income of the share of every such child, or his or her issue, or a sufficient part thereof, in their maintenance and education, and for an application of a reasonable part of the expectant share of any such child or their issue, for his, her, or their advancement, notwithstanding their minority: *Held*, to be void for remoteness. *Boreham v. Bignall*, 8 Hare, 131.

REPUBLICATION.

Codicil.—A married lady having, under her settlement, freehold property settled to her

separate use, and power to dispose of it by will, exercised that power by devising a certain part of the property to A. for life, with remainder to her nephew, and gave all the other freehold tenements, which she had, in anywise, power to dispose of, to her nephew for life, with remainder to his children. She, afterwards, purchased some leasehold tenements, out of her separate property, and had them assigned to M., in trust as she should by deed, will, or codicil appoint: and, in exercise of that power, she, by a codicil, bequeathed the leaseholds to her nephew, and confirmed her will. Some time afterwards she purchased the reversion in fee of the leaseholds, and had it conveyed to N. in trust as she should, by deed or will, appoint. She then made another codicil, in exercise, expressly, of the power reserved to her by the settlement and of all other powers, and thereby, after reciting the specific devise made by her will, she gave the property which was the subject of that devise, to A. in fee.

Held, that the second codicil did not republish the will, and, therefore, that the reversion in fee in the leaseholds did not pass by the residuary devise in the will, but the testatrix died intestate as to it. *Jowell v. Board*, 16 Sim. 352.

See Ademption.

REVOCATION.

1. Testator gave the residue of his personal estate to his niece, and appointed her executrix. By a codicil, he appointed A. & B. his residuary legatees and executors.

Held, that, though power to prove the will and codicil was reserved to the niece, the gift of the residue to her was wholly revoked. *Evans v. Evans*, 17 Sim. 107.

2. Residuary share.—*Intestacy*.—A gift by a will of one-sixth of the testatrix's residuary estate to S. W., revoked by a codicil, and the same sixth given to S. W. for life, with a direction, after her decease, to pay a legacy thereout, and that the remainder of such sixth should sink into the residue of her (the testatrix's) personal estate, and be disposed of accordingly:

Held, that the remainder of the sixth share of the residue was not thereby given to the other residuary legatees, but was undisposed of. *Humble v. Shore*, 7 Hare, 247.

SUBSTITUTED BEQUEST.

See Remoteness.

THELLUSSON ACT.

1. Income of Irish real estate.—The rents of Irish estates were directed to be accumulated and become part of the personal estate. *Held*, that although the Thellusson Act did not apply to Irish estates, yet that it applied to the rents, as invested from time to time, and that although the rents, which ought to be considered as corpus, might be invested for more than 21 years from the testator's death, yet that the income thereof could not. *Ellis v. Maxwell*, 12 Beav. 104.

2. The Thellusson Act must receive the same construction in the case of a trust for accumulation created by deed, as it has received in the case of a similar trust created by will: and, therefore, where A. transferred a sum of stock to trustees, and, by a deed, directed them to accumulate the dividends during the joint lives of M. & N., that direction was held to be good for so much only of the joint lives as expired between the date of the deed and A.'s death. *In re Lady Roslyn's Trust*, 16 Sim. 391.

Case cited in the judgment: *Griffiths v. Vere*, 9 Ves. 127.

3. *Portions.*—*Heir.*—Testator devised his freehold estates to trustees in trust to accumulate the rents during the life of his niece, and, on her decease, to stand seised of the estates, to the use of her first and other sons in tail.

The testator died in 1827, leaving his niece surviving.

Held, that the trust for accumulation became void at the end of 21 years after the testator's death, and that the testator's heir was entitled to the rents during the remainder of the niece's life.

Testator directed the rents of his freehold estate, and the income of his residuary real and personal estate, to be accumulated, in order to provide for the younger children of his niece and of B. S., each of whom took an interest under his will; and, in the clauses for the maintenance and advancement of the children, he termed the provision which he had so made for them sometimes *their portions*, and, sometimes, *their portions or shares*.

Held, that the provision was not a provision for raising portions within the meaning of the proviso in the second section of the Thellusson Act, and, therefore, was not exempted from the operation of the first section. *Hulford v. Stains, ex parte Stains*, 16 Sim. 488.

VESTED INTEREST.

1. Residuary personal estate was bequeathed in trust for *all* the sons and daughters of A. & B., (who were living,) the shares to be vested at 21, though "not payable or transmissible" until the deaths of A. & B. The will contained powers of maintenance: *Held*, that the sons and daughters, on attaining 21, acquired vested interests, subject to the rights of future-born children, and that after attaining 21, they were entitled, in the life of A. & B., to payment of their shares of the income, though not of the capital. *Ellis v. Maxwell*, 12 Beav. 104.

2. Testator bequeathed his residue in trust for his mother for life, remainder in trust for the children of his two sisters, in equal shares, as tenants in common, and to be vested *interests in the sons at 21, and in the daughters at that age or on marriage;* and if any of them should die under age, or as to the daughters, unmarried, then, as to the original shares *belonging* to the children so dying and the shares to which they might become entitled under the now-stating trust, in trust for the others of

them, in equal shares, their executors, &c.; and in case no child should live to attain a vested interest in the trust-funds, then in trust for the testator's next of kin. The testator then empowered the trustees (but, during the life of his mother, with her consent) to apply the whole or any part of the principal trust-moneys to which the children of his sisters *should be entitled* under the trusts thereinbefore contained for their advancement, notwithstanding they should be under age, or, as to daughters, unmarried; and he directed that, in case, at the death of his mother, any child who, under the trusts thereinbefore contained, might be entitled to any *vested or presumptive share or shares* of the trust-moneys, should, if a son, be under age, or, if a daughter, under age and unmarried, the trustees should pay the interest of their shares to his sisters, for the maintenance of their children.

The testator's mother died a few months after him. His sisters had several children, some of whom were born after the death of his mother. *Held*, that the mother's death was the period at which the shares vested, (subject, however, to be divested,) and consequently, that the after-born children were not entitled to participate in the funds. *Berkeley v. Swinburne*, 16 Sim. 275.

3. Testatrix directed the trustees of a fund (over which she had a power of appointment) and the survivor of them, his executors, administrators, and assigns, *to pay, assign, or transfer the same to R. M., in trust for his daughter, to be vested in her on attaining the age of 21 or day of marriage, which should first happen, and the interest and dividends thereof to accumulate for her benefit, and be paid to her with the principal, at the time before-mentioned.*

The daughter died under age and unmarried.

Held, that she did not take a vested interest in the fund. *In re Thurston's Trust*, 17 Sim. 21.

4. A testator by his will directed a fund to be set apart to answer an annuity which he directed to be paid to his widow. After her death he directed the fund to form part of his residuary estate to all his children equally, to be divided between them; with a proviso, that, if any child should die, either in his lifetime or after his decease, and before the part or share bequeathed to such child should become a vested interest, without leaving issue, then such share should go to the survivors: but in case any child should die leaving issue, then such issue should take their parent's share: *Held*, that the second branch of the proviso must be read in connexion with the first, and that in both, the death contemplated was a death before the share vested in possession. *King v. Cullen*, 2 De G. & S. 252.

See *Remoteness*.

[Numerous Cases on CHARITABLE BEQUESTS and LEGACIES will be given separately.]

The Legal Observer,

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SATURDAY, OCTOBER 4, 1851.  
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PROFESSIONAL QUALIFICATIONS.

CAN LAWYERS COMPREHEND ACCOUNTS?

A VERY general opinion prevails, both in and out of the Profession, that lawyers are ignorant of accounts; some even go so far as strangely to suppose that law and arithmetic are incompatible with each other; and that lawyers not only have neglected to make themselves acquainted with the proper mode of keeping accounts, but that to a legal mind there is something incomprehensible in the mercantile system of book-keeping.

Thus Mr. Commissioner Fane, in his evidence before the House of Lords' Committee on the "Masters' Primary Jurisdiction" Bill, says that "a person who has had the education of a lawyer generally knows nothing about accounts, and an accountant knows little of law. The duties are different and each must aid the other. (p. 77.) And again, "I am perfectly satisfied that no Court can successfully handle accounts, unless it has the assistance of a professional accountant attached to the Court." (p. 95.)

We have no doubt that the learned Commissioner has seen many instances of considerable ignorance in the professional men who go before him in bankruptcy matters, and that it is from no prejudice against the Profession that he deems them unacquainted with mercantile accounts. Doubtless he and all other Judges and Courts would prefer that the lawyers should redeem their arithmetical character and assist the Court with the result of their knowledge. We must venture to deny altogether the impracticability of a lawyer's acquiring a technical as well as scientific knowledge of commercial or any other system of book-keeping. We fear, indeed, that many solicitors do not enter their

own accounts in proper books in the best and most correct manner, but we know that there are many who are as regular and methodical as any merchant or banker; but with such instances the Commissioners are unacquainted for such men do not become bankrupt or insolvent; and we believe that a moderate amount of trouble would enable them all to master the supposed difficulty. Of late, indeed, the necessity of an acquaintance with book-keeping has been so far recognised that we understand it has been contemplated to include it in the examination of articled clerks. And, no doubt, some questions on that subject might very properly be put as one of the tests of the fitness of the candidate.

Just consider what are the duties of a solicitor in the course of his practice in regard to matters of account. He has to advise executors and administrators on the accounts of their testator or intestate and on their own accounts. He is consulted regarding the accounts of trustees;—of accounts between principal and agent,—between partners,—between merchant and factor or consignee,—and between debtors and creditors on proposed trusts and arrangements. Engaged in a suit in Chancery, he has to prepare or examine the accounts of receivers, managers, and bailiffs; and to prepare the charges and discharges, and vouch and support them, in the Masters' offices. In bankruptcies and insolvencies, even where professed accountants are employed, he must become acquainted with the nature of the accounts to be investigated and passed, in order efficiently to attend the Commissioners. Surely here are occasions in abundance to show that a solicitor cannot properly discharge his duty to his clients without a very considerable extent of knowledge and experience in accounts of various kinds.

We trust that in future this department of professional skill will be so cultivated, that the general reproach will not only be removed, but that a large proportion of our brethren will be distinguished for their knowledge and acuteness in commercial and other accounts, and fit themselves to occupy lucrative offices now bestowed on otherwise ill-educated persons. Indeed, amidst the changes which are in progress in all branches of legal practice, the solicitor should not fail to render himself useful in every matter requiring investigation for the benefit of his client. He should be thoroughly (what the Scotch call their lawyer) "a man of business."

Let it be remembered, also, that whilst the notion prevails, that "lawyers are bad accountants," and that professional accountants must be employed wherever accounts are to be investigated, the accountants will continue as they have always done, to *encroach on the proper province of solicitors*. They are called in to effect arrangements between an insolvent and his creditors, and not confining themselves to an examination and statement of the accounts, they prepare agreements of composition and conduct the whole business of the trust. This practice could scarcely prevail if solicitors were known to be fully competent in matters of account as well as in legal skill.

Another consequence of the popular prejudice has been, that official assignees and official managers are chosen from non-professional classes and usurp much of the business which ought to be transacted by the educated lawyer. It is time that this evil should be averted, and we trust the influential members of the profession will give the subject that attention which its importance requires.

In support of these views we may quote the opinion of Vice-Chancellor Turner, given in his evidence before the Select Committee of the House of Lords. Being asked whether a partnership account might not be taken by an accountant under the superintendence of a Judge of Chambers, Sir George said, that "the expense of accountants was greater than the expense of solicitors," and "he did not know that the system of taking accounts in the Court of Chancery could be much improved, if facilities were given to communications between the Masters and the Court to enable the Master to decide the principle upon which the accounts should proceed," (p. 110).

NEW STATUTES, RESPECTING ALTERATIONS IN THE LAW.

REGULATION OF ATTORNEYS AND SOLICITORS.

24 & 25 Victoria c. 63.

Provisions of recent acts relating to the admission and enrolment as attorneys of Bachelors of Arts or Laws at Dublin, tended to Degree of Bachelor of Arts and of Laws in Queen's University in Ireland, s. 1.

Certain provisions of former acts as to persons bound for five years, &c. extended to students of Queen's College, attending lectures and passing examinations in Faculty of Law during two collegiate years, s. 2.

Privileges given by recent act to Bachelors of Arts or of Laws in Universities of Oxford, Cambridge, Dublin, &c. as to attorneys admission in England, extended to Bachelors of Arts or Laws in the Queen's University, s. 3.

Certificate of Vice-Chancellor of Dublin University, &c. of Dean of Faculty, to be sufficient evidence, s. 4.

The clauses of the act are as follows:

An Act for amending the several Acts for the Regulation of Attorneys and Solicitors, &c. August, 1861.

Whereas by an act passed in the Session of Parliament held in the 1 & 2 Geo. 4, c. 43, intitled "An Act to amend the several Acts for the Regulation of Attorneys and Solicitors," and which was afterwards amended by an act passed in the 3 Geo. 4, c. 16, intitled "An Act to amend an Act made in the last Session of Parliament for amending the several Acts for the Regulation of Attorneys and Solicitors," Provision was made for facilitating the admission of graduates of the Universities of Oxford, Cambridge, and Dublin, and the pupils of practicing barristers, and of certificated special pleaders, as attorneys and solicitors of the Courts of Law and Equity, in manner and upon the conditions in the said acts mentioned: And whereas by an act of the 6 & 7 Vict. c. 23, the said recent acts have been repealed, except so far as the attorneys and solicitors of Ireland are affected, thereby, but the same are still in force as regards Ireland, and the attorneys and solicitors of Ireland, and whereas since the passing of the said recent acts the Queen's Colleges of Belfast, Cork, and Galway have been founded by letters patent of her Majesty Queen Victoria, under the Great Seal of Ireland under the authority of an act passed in the Session of Parliament held in the 3 & 4 Vict. c. 56, intitled "An Act to amend her Majesty's Letters Patent bearing date the 10th day of August, 1842, relating to the said Colleges, and

whereas by the said Statute patent a Faculty of Law has been established in each of the said Queen's Colleges: And whereas since the passing of the last-mentioned act a body politic and corporate had been constituted by the Royal Charter of her Majesty Queen Victoria, under and by the name of "The Queen's University in Ireland:" And whereas it is expedient that certain of the provisions now in force of the said two first-recited acts should be extended to students who have obtained or shall hereafter obtain the degree of Bachelor of Arts or the degree of Bachelor of Laws in the said Queen's University in Ireland, and to students of the University of Dublin, or of the said Queen's Colleges who have attended and who shall attend the lectures of the professors of the Faculty of Law in the said University of Dublin or any of the said Queen's Colleges: Be it therefore enacted...

1. That from and after the passing of this act all the provisions, regulations, conditions, and restrictions of the said two first-recited acts now in force (as regards that part of the united kingdom of Great Britain and Ireland and the attorneys or solicitors of Ireland, for or relating to the admission and enrolment of attorneys and solicitors of persons who have taken or shall hereafter take the degree of Bachelor of Arts or Bachelor of Laws in the University of Dublin, shall extend and be applicable to the admission and enrolment as attorneys and solicitors of all persons who have taken or shall hereafter take the degree of Bachelor of Arts or the degree of Bachelor of Laws in the said Queen's University in Ireland, as fully and effectually as if the said body politic and corporate called "The Queen's University in Ireland" had been constituted and founded at the time of the passing of the said acts, and had been therein named together with the said University of Dublin, and as if the degree of Bachelor of Arts and the degree of Bachelor of Laws of the said Queen's University had been in the said acts named together with the degrees of Bachelor of Arts and Bachelor of Laws of the said University of Dublin.

2. That every person who, as a matriculated or as a non-matriculated student of the University of Dublin or of any of the said Queen's Colleges shall have attended or shall attend any prescribed lectures, and shall have passed or shall pass any prescribed examinations of the professors of the Faculty of Law in the said University of Dublin or in any of the said Queen's Colleges for a period of two collegiate years, and who shall have duly served as an apprentice or clerk, by contract in writing, duly stamped at or before the signing thereof, or within six months after, for the term of four years, in like manner as by the provisions now in force of the said two herein-before first-recited acts is directed respecting the service for the term of five years, shall at any time after the expiration of five years from the commencement of such attendance on lectures, or of such period of service, which shall first happen, be

qualified to be taken and to be admitted as an attorney or solicitor respectively, according to the nature of his service, of the several and respective Superior Courts of Law or Equity in Ireland, as fully and effectually to all intents and purposes as any person having been bound and having served five years is qualified to be sworn and to be admitted or enrolled as attorney or solicitor under or by virtue of any act or acts now in force for the regulation of attorneys or solicitors in Ireland, anything in the said acts or any of them to the contrary in anywise notwithstanding.

3. And whereas, under the provisions of the said recited act of the 6 & 7 Vict., certain privileges were granted to any person seeking to be admitted and enrolled as an attorney or solicitor in England or Wales, and who shall have taken or who shall take the degree of Bachelor of Arts within six years after his matriculation, or the degree of Bachelor of Laws within eight years after his matriculation, in the University of Oxford, or of Cambridge, or of Dublin, or Durham, or of London, and who shall in matter therein mentioned be bound by contract in writing to serve as a clerk to a practising attorney or solicitor in England or Wales, and shall have continued in such services, and have been employed as in the said act respectively mentioned, and have examined and sworn as in the said act directed: Be it enacted, That the like privileges, subject to the like regulations, conditions, and restrictions, shall be extended to persons who shall have taken the degree of Bachelor of Arts or Bachelor of Laws in the said Queen's University, as if the said Queen's University, and the degree of Bachelor of Arts and the degree of Bachelor of Laws of the said Queen's University, had been in the said act named together with the said Universities of Oxford, Cambridge, Dublin, and Durham, and London, and with the degrees of Bachelor of Arts and Bachelor of Laws in the said Universities of Oxford, Cambridge, Dublin, Durham, or London.

4. Provided always, That the Court or other sufficient authority in Ireland to whom any such student shall apply to be admitted as an attorney or solicitor shall receive the certificate of the Vice-Chancellor, of the University of Dublin, or such other certificate as shall be appointed by the Board of Senior Fellows of the said university, or of the Dean of the Faculty of Law for the time being of any of the said Queen's Colleges, as sufficient evidence of the student named in such certificate having duly attended the prescribed lectures, and passed the prescribed examinations of the Professors of the Faculty of Law in such college for the said period of two collegiate years, and of the time of the commencement of the attendance of such student upon such lectures.

NOTICES OF NEW BOOKS.

Consuetudines Kancie. A History of Gavelkind and other Remarkable Customs of the County of Kent. By CHARLES SANDYS, F. S. A., (Cantianus). London: John Russell Smith. 1851. Pp. 352, xvi.

THIS is a learned, curious, and very valuable volume, peculiarly interesting, not only to the landed proprietors in the county of Kent, and to the members of the Profession in that celebrated part of the kingdom, but to the legal antiquary in general. We hope hereafter to find room for some extracts adapted to our collection of "Legal Antiquities."

The work contains *fac-similes* of an ancient Charter of Feoffment, (*sans date*), before the Statute of "Quia Emptores Terrarum," 18 Edw. I.; of an ancient Charter of Feoffment, 49 Hen. 3, A. D. 1264, before the Stat. of "Quia Emptores;" and of an ancient Charter of Feoffment, 27 Edw. 3, A. D. 1353, *after* the Stat. of "Quia Emptores," with English translations, and also the *Genealogia-Saxonica* of Woden, and the Saxon (Jutish) kings of Kent.

Some of the principal contents are as follow:—Customal of Kent (Anglo-Norman and English) allowed by Justices in Eyre, 21 Edw. I.; Gavelkind; Consuetudines Kancie; Analytical Commentary on the Customal of Kent, in 22 sections; of the custom of Kent to devise Gavelkind Lands; Ranks and Degrees of Nobility and Gentry among the Saxons; Glossary; Table of recent Statutes relating to Real Property; General Index, &c.

PRIMARY JURISDICTION OF MASTERS IN CHANCERY.

OBJECTIONS OF VICE-CHANCELLOR TURNER.

IN the inquiry before the Select Committee of the House of Lords, the majority of the witnesses examined appear to have been in favour of the bill for conferring Primary Jurisdiction on the Masters in Chancery in Administration Suits. Very conflicting opinions, however, prevail on the best plan for improving the procedure of the Court. Some are inclined to supersede the Masters altogether;—calling on the Judges to sit in Chambers, and to aid them in working out their own decrees by a competent staff of clerks. On the other hand,

the bill which was referred to the Select Committee proposed to give the Masters an original jurisdiction, and so far to raise them to a higher judicial position than they now possess. "Who shall decide, when doctors disagree?"

Our readers will, no doubt, wish to have before them the views of so competent a person as Vice-Chancellor Turner on this subject. His Honour was called before the Lords' Committee, and it being understood that he entertained doubts on the bill, for sending matters to the Masters in the first instance, instead of by reference from the Court, he was requested to state his objections. The following is an extract from his evidence:—

"In order to understand the subject, it is necessary to be aware what a matter of administration is. A matter of administration may involve some of the most important and difficult questions which arise in the Court of Chancery. If a question arises whether a man has died *testate* or *intestate* as to a share of his *residuary* estate, a bill, according to the present practice, is filed by his next of kin, for the purpose of administering his estate; and the first question to be decided is,—'Have the next of kin any right or interest?'—a question which involves the construction of the will of the testator: this is one matter of administration. Again, in any question arising on a *legacy*, the matter assumes the shape of a suit for administering the estate, and the first question to be determined is the title of the legatee: this is another matter of administration. Again, in cases of bills filed by *creditors*, which is a third matter of administration, the first question is upon the creditors' debt; that debt may be barred by the Statute of Limitations; there may be an equitable set-off against the legal debt. Questions of every description may arise in a suit in what is called a matter of administration. According to my view of this bill, the effect will be, that those questions will fall to be decided by the Master. The first question he will have to consider will be the title under which the party claiming seeks to administer the estate. The suit in which he will have to consider it may be either a contentious or litigated suit, or an amicable suit.

"If the question arises in a contentious or litigated suit, of course the question would be brought before the Court by *Appeal*; and then the effect of this bill would be to increase what is already a most crying evil in the Court—the number of appeals which arise in the progress of a cause. Your Lordships are aware that any decree made by the Master of the Rolls, or any of the Vice-Chancellors, may be re-heard before the Lord Chancellor, and then be brought to your Lordships' House by way of appeal. And the effect of giving the Master jurisdiction to decide the question between the parties in a contentious or litigated suit would be to add

an additional appeal; for almost as a matter of course the parties are never satisfied with the decision of the Master. In all my experience, from the year 1831, whenever a question of any importance has arisen between the parties in the Master's office, I have never known the parties rest satisfied with the decision of the Master. An appeal to the Court is almost universal.

"In cases of *specific performance*, where the title comes in question, you have the Master's opinion upon the title; but nobody has the least regard to that opinion; it is carried up to the Court by way of exceptions, and the parties take the opinion of the Court upon it. Such would, in my opinion, be the effect of this bill in contentious or litigated suits.

"In the case of *amicable suits*, I apprehend still greater danger from the measure, and I apprehend it for this reason: the solicitors by whom the business before the Master is conducted may not be, and frequently are not, cognizant of the difficulties, in point of construction or of law, which the case may present; and that this is the case in many instances is evident from the fact that we continually have wills, which have been prepared by them, brought before the Court for construction; and thus a very profitable effect of this measure, as applied to amicable suits, would be, that the solicitors might not see the points upon which the rights of the parties depended; and the matter might pass before the Master without his attention being drawn to the question. Take, for instance, the question which is continually arising in our Courts as to the remoteness of limitations, where the property would go to the legatees, or to the next of kin, according to the period at which the interests vested; and suppose that question to be involved in a case carried in before the Master under this bill; the solicitor, who prepared the will, might not be in the least degree aware of the question, and the matter might go before the Master, and never be drawn to his attention. The suit being amicable, there would be no party to bring the case before the Court, and thus the property of A. might, quite unintentionally, be given to B., from the circumstance of nobody seeing the real question that arises."

On this his Honour was asked, whether that did not suppose that the Master himself was equally ignorant of what he was about with the solicitor? And in answer to this question, he said—

"It supposes this—that if the Master's attention was not drawn to the point, he might not see it. I think, from your Lordship's experience on the Bench, you will say, that if your attention was not drawn by counsel to a question, it is very likely that it might escape your notice. I have constantly cases coming before me upon petitions to confirm reports under the

act which Lord Cottenham passed—cases under the Trustee Relief Act. Funds are paid into Court; and the parties apply by petition to have the funds distributed, and the rights determined. It is my habit to read those petitions before I make any order upon them. Sometimes it has occurred to me to see a point arising upon those petitions which has been overlooked by the counsel arguing before me, and sometimes counsel have suggested points which have not occurred to me on reading the petition. With all possible respect to the Masters, I think such points are not unlikely to be overlooked by them, where their attention may not have been drawn to the points, and where, perhaps, no counsel may have attended."

It was then pointed out that his Honour assumed that in all those cases the Master was not to be attended by counsel, and he replied thus:—

"I think, my Lord, that if the Master is attended by counsel, the expense will be enormously increased. I would not wish to be in any degree understood to say that reform in the Court of Chancery is not wanted; in my opinion it is wanted, and exceedingly wanted. But the question, in my view of it, is the mode in which that reform should be effected. With reference to the administration of estates, the plan which occurred to me, and which I submitted to the late Lord Cottenham—and who, I believe, would have adopted it, but that he had himself at that time prepared a plan for claims—was this; to have a *statutory form of bill* adapted to simple cases, and upon that form of bill to have an order of course for the parties to show cause why a decree should not be made in another statutory form. And then the effect would be, that the matter would go to the Master at a very trifling expense, and you would in the first instance have the check of the Court to see whether the plaintiff's title was right or not; and if the matter went to the Master, it would go upon specific directions contained in the decree. That plan was before Lord Cottenham, and what he said upon it was, that there were advantages in that course of proceeding on the one side, and advantages in his own on the other; and that as he had carried his own out to a certain extent, he should adopt it in preference to the one I suggested."

In a subsequent part of the examination, Sir George was requested to state his own scheme, and to consider the question of costs as one element of its supposed advantage. The Vice-Chancellor said,—

"I have not estimated it in that way; the course which I should recommend would be this: I should have a set form of bill prepared; a creditor, for instance, sees the estate of a man who is dead. I should have a statutory form of bill, which would simply say that the testator had died; that he was at the time of his death indebted to the creditor; that the executor had proved the will, or that somebody had

More frequently prepared by unqualified persons, for the Stamp Act allows any one to prepare a will.

administered to the estate, and that the debt remained unpaid; and I should allow a bill in that form to be filed by anybody, without the signature of counsel. I should then enable the party to take out an order, of course, which would cost half a guinea, or somewhat more, to serve upon the executor, to show cause why a decree, in a form also set out in the statute, should not be made, referring it to the Master to take an account of the estate of the deceased debtor, and ascertain his debts, and to administer his assets according to the common form of decree. Upon that show cause order being mentioned to the Court, it would appear whether there was any objection to the plaintiff's debt; and if the executor said, 'I admit the debt, but I have no assets to pay,' I should at once say, 'The decree goes, without any further expense, to take an account.' It is to be ascertained by the Master whether there are assets or not. If he said, 'The debt is barred by the Statute of Limitations,' I should say, 'You must give me affidavits upon that subject.' And if he said further, 'All the accounts have been settled with the creditors,' I should say, 'That is a case in which you must proceed regularly by suit;' and therefore the expense would depend upon what the nature of the debt administering assets, where there was no other fence might turn out to be. In a simple case difficulty than the difficulty of ascertaining whether there was an estate to pay, I apprehend that the whole matter would get into the Master's office, at an expense of 2*l*. or 3*l*. The difficulty in my view of the case is that you cannot specify what is a simple case, and what is a complicated one; and in the attempt to go too far, you get the complicated cases involved, and enormous expense occasioned."

STATE OF THE PROFESSION.

OPINIONS OF THE PRESS.

AMONG the recent symptoms of the alteration in the legal profession now in progress, not the least significant, says *The Times*, are the resolutions of the Northern Circuit, which are said to have been lately adopted by that great section of the English Bar at Lancaster. To these resolutions the Bar have been driven by the working of the County Courts Act. To meet the exigencies of altered times the old etiquette of the profession has been departed from. The Bar of Westminster Hall is at this moment upon the eve of a great *debacle*, and here we have the first, unmistakable evidence of the general break-up. So long as the chief part of the legal business of the country was confined to the Superior Courts of Westminster Hall the Bar of necessity congregated in London, and formed one united body. The distinction between the two classes of the profession, between barristers and attorneys, being the result of general convenience, was carefully and easily maintained. A code for the government of these two classes, and a machinery for enforcing it, were by degrees formed, employed, and obeyed. A

One consequence resulting from this division in legal employments has often been made a subject of discussion. During past times it certainly has been the peculiar characteristic of the Bar of England, and has given to it some of the highest qualifications by which it has been distinguished. We allude to that rule of the profession by which a barrister was compelled to receive his instructions, in all cases, from an attorney, and forbidden to put himself in direct and immediate communication with the party for whom he appeared. The great practical consequence of this rule was to keep the counsel personally out of the case he advocated, and to relieve him from all responsibility as to the justice or injustice connected with it. This, at first sight, might seem to give counsel a dangerous licence, likely to render him careless of truth, and, by making him habitually unscrupulous, perverting the whole tone of his morality. But the actual result does not agree with this *a priori* deduction. While the counsel spoke from written instructions, knew personally nothing of his client, and was bound by the rules of his profession not to import into the case his personal feelings, a very definite and well-understood code grew up; and in all that related to personal conduct on the part of the Bar, as nice and rigid rules were adopted as those which have always governed military men.

To those who may perchance be sceptical with respect to this statement we will suggest a means of testing its accuracy, by which at the same time an illustration of the general working of the system itself may be obtained. The test we propose is a comparison. Take any report of an important trial in a criminal case in France, and compare the steps of the whole proceeding with those of a trial of the same description in England. The calm, decorous, impassive conduct of all engaged in the English trial, when put into contrast with the extraordinary passion and vehement conflict of emotions that are invariably manifested in the proceedings of the French tribunals, must, we think, strike every impartial observer; and when for the defence even the warmth of advocacy has carried a counsel beyond the strict line of his duty—when he has in any such case imported *himself* and his own feelings into the cause—the instant rebuke of the whole profession has been the consequence of his error. Some of the practical consequences of this state of things deserve to be carefully considered.

The morality of the profession, its code of honour, and rules of conduct, are, in fact, made and maintained by the most distinguished men in it. These men are constantly before the world, subject to censure, and open in every act to scrutiny unrelenting and unparrying. From these chiefs the judges of the land are selected, who in their more exalted position enforce on others the strict and nice rules which they, when counsel, have obeyed. The result is what we now see—an administration of the law which no breath of suspicion dare sully. But if, as we believe, the chief legal

business will hereafter be transferred to the County Courts, the character, the rules of conduct and the established morality of those who practise in those Courts assume an importance equal to that hitherto attaching to the rules of Westminster Hall. The immense body of persons who have hitherto been accustomed in the various characters of attorneys, barristers, and judicial functionaries, to contribute to the administration of the law in the metropolis will, in fact, soon be scattered in separate groups over the country. The great mass of business will be done in the County Courts. The law will be kept uniform by means of a central Court of Appeal, for which a very restricted Bar will be found sufficient. If this great change is effected rapidly, as everything induces us to believe it will be, the practical question is immediately suggested—will it be wise to continue the distinction heretofore existing between the two branches of the profession, and thus enable a provincial Bar to arise round each County Court, with all the rules which have been hitherto adopted, or shall we entirely break down the distinction between barristers and attorneys, and trust to chance for the good government of those by whose means the law is to be administered?

We certainly ought to bear in mind that throughout the United States of America the barrister and attorney are one—the client from whom you to-day have received your instructions you to-morrow represent in Court. In the populous cities of the United States the division of employments does indeed arise, although the law makes the characters of counsel and attorneys. Legal firms consisting of two or more partners divide the labour of the profession among them—the one partner seeing the clients, the other representing them in Court. But the advantage which we believe, to follow the legal division, in the shape of a more nice and strict rule of conduct, is not so likely to result from this merely convenient arrangement. Reger competition will become unscrupulous. The supervising public not being numerous, the profession not being guarded by a body of leaders popularly amenable to public opinion, rapacity and recklessness may, we fear, become the characteristic of the lower grades of the judicial hierarchy—corruption of the higher.

Such are the possible drawbacks on the state of things that is approaching. The people have so long been afflicted with the evils of an expensive and dilatory judicature, that their patience has at length been worn out, and they are now determined to have their law cheap. To leave such a matter to be decided by the contests of the two branches of the profession is most impolitic. The subject is one of public interest, and ought to receive the fullest discussion. The old system is evidently doomed, common sense suggests that the introduction of a new one should not be left to the chance for the haphazard determinations of personal interest. From the Newcastle Journal and edit. printed on at a full review of

LAW OF ATTORNEYS AND SOLICITORS.

DELIVERY OF UNSIGNED BILL—TAXATION AFTER A YEAR.

In the matter of *Gedge*, 14 Beavan, 56, it was held; that a solicitor who delivers an unsigned bill of costs is bound by it, but that his client may either treat it as a nullity or waive the want of signature and adopt it; though after such waiver the client cannot treat the bill as non-delivered. It was also decided that after more than 12 months from the delivery of unsigned bills, the client was not entitled to a taxation except on showing sufficient "special circumstances;" and that the possession of the papers in a cause was not a sufficient special circumstance, to warrant the taxation of a bill delivered more than 12 months. From the judgment of Sir John Romilly, the Master of the Rolls, we extract the following:

This is an application for the taxation of five bills of costs, for business transacted for the plaintiffs in a suit of *Toulmin v. Copland*, and the grounds on which the application is made are two. First, that as the bills are unsigned, the clients are entitled to taxation, although they should not make out such special circumstances as would be requisite in the case of a bill signed under the statute. And, That treating the bill as one to which the provisions of the statute apply, the petitioners have proved such special circumstances as entitle them to have the bills taxed.

In support of the first ground it is urged, that both reason and equity, and the decided cases, settle that a solicitor who delivers an unsigned bill shall not take advantage of this defect;—that he cannot deliver an unsigned bill and take the chance of its payment, and if the client require it to be taxed, then say, "the bill is a nullity, and I will now deliver my real bill of costs." The case of *In re Pender* is cited for an authority for this proposition. I concur in this; but it still remains to be seen whether this will entitle the petitioners to the order for taxation asked for. I think that it will not. The client who receives an unsigned bill may, if he please, treat it as a nullity; the attorney can bring no action upon it, and he may wholly disregard its existence. But, on the other hand, he may, if he please, treat it as a bill delivered under the statute;—he may, in fact, waive the signature of the attorney to the bill, and treat it as if the proper formalities had been complied with, it is his privilege to

This judgment was pronounced so lately as the 22d April. The profession will be glad to find that the "Irregular" Reports are published thus early.

do so, and the solicitor, by delivering an unsigned bill, enables his client to exercise his option on this subject. But I apprehend that it is not in the power of the client to treat it as both,—i. e., to treat it first as a duly signed bill, and if that fail his purpose, then to treat it as a nullity.

In this case the solicitor could not have sustained an action to recover the amount; and if the petitioners intended to treat the bill as a nullity, they should have taken no step whatever in relation to it. They should not have applied for the common order for its taxation, and when it was discharged, they should not have applied for the special order for its taxation, which is now asked for. This conduct is inconsistent with the treating the bill as a nullity.

Then it is said that this course became necessary because the suit could not be proceeded with without the papers, and that the application was necessary for the purpose of obtaining them; but this is I apprehend erroneous. A client who has discharged his solicitor who has a lien on the papers required for the purpose of a still pending suit, may apply, wholly independently of the statute, that the solicitor may deliver his bill of costs, and may, upon payment into Court of what shall be sufficient to cover the amount claimed and the costs of taxation, obtain possession of all the papers covered by the solicitor's lien.² Assuming that the petitioners could have treated the five unsigned bills as nothing, about which I express no opinion, the course they should have taken to obtain the delivery of the papers, if required for the prosecution of the suit, appears to me to be clear. I am of opinion, therefore, that the circumstance of the five bills having been delivered unsigned cannot, in this case and for the purpose of this petition, avail the petitioners. I think that they have, as they were entitled to do, waived that formality by the course they have pursued; and I think further, that if they had not so waived that formality, it would not enable them to ask for the taxation of the bills; but that if I thought the want of the signature fatal, I could make no order for the taxation of what was in truth nothing.

It has here been urged upon me by Mr. Freeking that, though I am not to treat the want of signature as making the bills a nullity, I am to treat it as a "special circumstance," entitling his clients to an order for taxation under the statute. But I cannot follow this argument. The statute treats of the taxation of signed bills; the client may, by waiver of the formality, put an unsigned bill in the position of a signed one; but in that case the "special circumstances" must be something wholly independent of the formalities with which the bills are delivered and which have

been waived by the client. I think, therefore, that I am compelled to regard this case in the same manner as if application was made to tax a bill of costs delivered accompanied with all the regular formalities.

In this view of the case, I am to consider the second branch of the argument and to regard what are the "special circumstances" proved, and how far they entitle the petitioners to the order which they ask for.

The "special circumstances" relied upon are overcharges in the bills, and two items are especially referred to as constituting the right to taxation:—1st, 36l. for the consequence of filing an amended supplemental bill, as if it had been an original bill, and which was ordered to be taken off the file. The facts relating to this matter are clearly detailed in the affidavits, without any contradiction. Mr. Toulmin delivered the bill to Lott, Gedy's clerk, to file without saying that it was an amended bill. He assumed and believed, I make no doubt, that Lott knew that the bill was an amended bill; but this was not so, and this circumstance gave rise to proceedings which cost 36l., and which the petitioner, say Mr. Gedy, is not entitled to charge. I must at this time consider that Mr. Toulmin was the agent of Mrs. Toulmin, the plaintiff. Before 1844, he had been the solicitor of Mrs. Toulmin; he still continued to manage her business; and I think that it must be inferred that he was not less the agent of Mrs. Toulmin for managing all the business relative to this suit in 1844, than he was her agent to accept the bill in 1849. I must, therefore, treat Mr. Toulmin as the client. It was urged by Mr. Freeking, that if a client directs his attorney to take an unwise course, and the attorney does so, and thereby occasions costs improperly, he would be liable to his client in an action for negligence or ignorance. This may be true, because the client being ignorant of the effect of legal proceedings, it is the duty of the solicitor distinctly to point out the consequences of the step so directed to be taken. But the case is very different where the client is himself a solicitor, and is, in truth, conducting the business himself, in the name of his agent, or of one to whom he has sold the business. It was an unfortunate slip, and there was some error probably on both sides,—that is, both on the part of Mr. Toulmin and of Mr. Lott, but there is not sufficient to entitle a client to obtain the taxation.

The item respecting the short-hand writer's notes stands thus:—in Mr. Emery's first affidavit, it is classed generally with the items considered to be overcharges. Mr. Lott, in his affidavit in answer, states that the notes were made at the suggestion of Mr. Toulmin, and Mr. Toulmin in reply does not deny it.

I think that neither the one item nor the other entitles the petitioners to refer these bills to taxation. Coming to this result, it has not been necessary for me to consider whether any overcharges alone, not accompanied with fraud, would have enabled the petitioners to require

² See *Balch v. Symes*, Turn. & R. 87; *Lord v. Wormleighton*, Jacob, 580; *Mills v. Finlay*, 1 Beavan, 560; *Richards v. Platel*, Cr. & Ph. 79; *Blunden v. Desart*, 2 Dr. & War. 405.

to have the five bills referred to taxation. It is sufficient to say that the items are not such as, in the circumstances of this case, entitle the petitioners to the order they ask; and I am therefore compelled to dismiss the petition, and in doing so to make the petitioners pay the costs."

INCORPORATED LAW SOCIETY.

REPORT OF THE COUNCIL TO THE ANNUAL GENERAL MEETING.

19th June, 1851.

[Concluded from p. 422, ante.]

V. ENCROACHMENTS ON THE PROFESSION.

Complaints having been made of the malpractice of a *certificated Conveyancer*, the Council inquired into the facts, and have been in communication with the Benchers of the Inns of Court of which the party is a member, and the matter is still under consideration. This case has induced the Council to revive before the Benchers the general question of the encroachments of certificated Conveyancers on the province of Solicitors. They have accordingly laid before the Benchers a statement relating to the course of practice of certificated Conveyancers, who do not limit their professional employments, like special pleaders and equity draftsmen, to the preparation of legal instruments, and advising on points of Law or Evidence, but act as attorneys and solicitors in conveyancing business. And it has been submitted that the permission to practise under the Bar was intended by the Inns of Court to be confined, according to the terms of the Stamp Act, to "drawing or preparing any conveyance of, or deed or instrument relating to, any estate or property, real or personal, or any other deed or contract;" and that it is not consistent with the intention of the Benchers that their members shall copy or engross deeds, prepare abstracts of title and other papers, nor open offices for negotiating and conducting conveyancing matters, usually confided to attorneys and solicitors of the Superior Courts.

The Council have therefore submitted to the Benchers, that the gentlemen practising under the Bar should be restricted to their legitimate province; and that in future the sanction of the Inns of Court should be withheld from this irregular class of practitioners.

The Council also have to observe on the increase of a large class of persons who, without any legal education or regular qualification, practise as Agents in Parliamentary business, and solicit Letters Patent for inventions. The Council think that these important branches of business should be confined to attorneys and solicitors; and they have under consideration the means by which this object may be attained.

The Council have again received complaints of the establishment of Societies for assisting persons in the recovery of debts in the County Courts, out of a common fund of subscribers, although they have no common interest in the

subject-matter of the suit. There seems no doubt that societies so constituted are illegal, and notice has been given to the solicitor of one of the societies complained of, in order that the parties concerned may withdraw therefrom, or at least abstain from carrying out any of the illegal objects contemplated by them.

VI. REGISTRATION AND EXAMINATION.

The business confided to the Society of the Annual Registration of Attorneys and Solicitors has proceeded, as usual, under the Regulations which were established on the passing of the Act in 1843 for consolidating and amending the Law of Attorneys and Solicitors.

From the number of Registrar's Certificates signed each year, it appears that there has been an increase of 20 yearly, or 145 in 7 years,—a small number, compared with the large increase in the wealth and population of the country.

It has been the duty of the Council to consider numerous applications for the Registrar's Certificate, not within the ordinary rules, and, where necessary, the judges have been attended on the subject.

The number of Candidates examined during the last four Terms, ending with Easter Term, was 471; and of these 445 were passed. It is now 15 years since the Examination was instituted, and the average number examined during the whole period has been annually 419, making a total of 6,295, of whom 5,918 were passed.

VII. THE ADDRESS TO THE LORD CHANCELLOR.

The Members of the Council have concurred with a large body of their brethren, the attorneys and solicitors practising in London and Westminster, in an Address to Lord Truro on his elevation to the office of Lord High Chancellor of Great Britain, whose distinguished career was commenced in this branch of the profession. For the second time only has the highest dignity of the law been attained by one who, for many years, practised as an attorney and solicitor. The Lord Chancellor, in his answer to the Address said, that "respectable solicitors were amongst the most valuable members of society, that he was sensible how deeply the public were interested in the station in which they were maintained, and the estimation in which they were held, and in returning his cordial thanks to the gentlemen who had concurred in the Address, he assured them of his sincere wishes for their prosperity, and that nothing would be more congenial to his feelings than to have it in his power to contribute to it."

The Council trust that, in pursuance of such Address, a Portrait of the Lord Chancellor will be placed in the Hall before the next Annual Meeting of the Society.

VIII. GENERAL AFFAIRS OF THE SOCIETY.

The New Building.—It was referred to the Council at the last General Meeting to consider

¹ In 1848-4, the number was 9,942; and in 1849-50, it was 10,087.

the proposed reduction of the Admission Fee of Country Members, and the appropriation of the Rooms for the use of the Club in the New Building on the North side of the Hall. The Council have abounding given their best attention to these subjects, and are of opinion that it is not expedient, in the present state of the Funds of the Society, to reduce the Admission Fee of Country Members. On the other point, they have to remind the Members that the establishment of a Club formed part of the original plan of the Institution; that on the Club being opened every Member of the Institution was invited to join, it without Ballot. That Rules, including the Ballot, were framed for the future regulation of the Club, and submitted to the Council, who, under the authority of the Bye Laws, established such Rules; and every Member who subsequently joined the Society must be presumed to have been aware of the terms of admission into the Club, and to have joined the Society subject thereto. The Council are of opinion that the continuance of the Club, as confined to Members of the Society, is beneficial to the Society; and that if the Funds of the Club were sufficient to enable it to pay an adequate rent to the Society under a lease of the Club Rooms, with power to the Club to admit persons not Members of the Society, it would not be expedient to grant such lease, or to appropriate the Rooms in any other manner than at the will of the Society. The Council, therefore, have come to the conclusion that it will be expedient to continue the present arrangement with the Club.

The Council have directed, for the accommodation of the Members, that when the Arbitration Rooms are not engaged they may be used by the Members on Conferences between themselves or their clients; and when the Council are enabled to proceed with the building on the south side of the Hall, they will probably be enabled to place two rooms, at least, at the disposal of the Members for Conferences which cannot conveniently be held in the Hall.

It may be proper to remind the Members that the recent New Building has afforded additional accommodation and security for the deposit of deeds and documents of importance; and this undoubted security and great facility of reference are peculiarly important at the present time, when the question of the loss of deeds from fire is under the consideration of Parliament. In the Strong-rooms of the Society, occupying the whole basement of the building, the safety of deeds is unquestionable. Each tenant of a Fire-proof Room has not only the security of his own iron door, but it is protected by an outer door in charge of the Secretary. Such, therefore, of the Members as have not the advantage of fire-proof closets in their own offices, may be accommodated in the Institution at a moderate rent, or they may deposit single boxes of deeds in the Society's Deposit Room.

The Library.—The additions to the Library, during the past year, consist of 428 volumes,

including donations from strength Authors, and from Members of the Society, whose names appear in the Donated Book. The whole collection now consists of 12,441 volumes.

The Catalogue, which has been long in preparation, is now completed, and will be shortly supplied to the Members. It consists of two parts: the first arranged under the heads of, 1. Law; 2. County History, Topography, and Genealogy; 3. Public Records, and Parliamentary Works; 4. Miscellaneous. The second part contains an Alphabetical Index, according to the Author's name, and (when Anonymous) according to the subject.

The Lectures have been continued in the usual departments: namely, by Mr. Jobb, on Equity and Bankruptcy; by Mr. Hodgson, on Common Law and Criminal Law; and by Mr. Karlake, on Conveyancing. It is unnecessary to enlarge on the utility of these lectures to Articled Clerks and the younger Members of the Profession. The Council earnestly recommend the Members to afford their Articled Clerks an opportunity of improvement, by attending the Lectures, the Subscribers to which have somewhat increased in the present year, as compared with the previous one.

Vacancies in the Council.—The Council much regret the occurrence of two vacancies in their body: the first by the death of Mr. Wing, who, from the time of his election on the Council in February, 1846, was frequent in his attendance at its meetings, and took a warm interest and active part in all the affairs of the Society: the second, by the resignation of Mr. Metcalfe, one of the earliest Members of the Committee of Management, under the first Charter. It was with sincere regret that the Council came to a resolution for accepting such resignation, every Member being fully sensible of the great and effective services rendered by Mr. Metcalfe to the Institution, and of the very liberal support given at its commencement, and subsequently by his donations to the library; and the Members of the Council expressed their high sense of the respect and regard which they entertain for him, and their sincere regret at his separation from them.

The Council also much regret to add that Mr. John Innes Pocock, the Vice-President of the Society during the past year, is unable from his present ill-state of health, to undertake the duties of President for the ensuing year; and the gentlemen of the Council, meeting in rotation, have therefore been proposed for the offices of President and Vice-President.

Number of Members.—During the past year 35 new Members have been admitted into the Society, and 12 have retired. The Council regret that the number of deaths has been greater than usual, being no less than $3\frac{1}{2}$, and the Society now consists of 1,320 Members, of whom 1,026 reside in London, and 294 in the country.

State of the Fund.—The Auditors' account, which, as usual, has been left for inspection in the Secretary's Office, will show the receipts and expenditure of the year 1846, and the balance of

Income statement expenditure, which, on the average of several years, has been upwards of 4,200, was last year about 600 only, owing to the increased disbursements in Parliamentary and law proceedings; but, in the present year, it is estimated that the balance will be considerably larger than in the last year.

in closing their Report, the Council would ask a recognition to the Members, not to rest satisfied with the large and unexpected measure of success which has marked the progress of the Society from its commencement to the present time, but to continue their support, and use their exertions in its behalf; and, by promoting a knowledge of its utility, inviting the introduction of new Members, to strengthen its influence, and extend its advantages, as ultimately to concentrate the whole of this branch of the law under one roof; and, after the manner of the kindred learned Professions, combining identity of object with a uniform system of progressive superintendence, adapted to the exigencies of the time.

-(Signed) **Richard Harrison, President.**

PROCEEDINGS AND RESOLUTIONS AT THE
ANNUAL GENERAL MEETING.

Read the Circular convening the Meeting, and the Minutes of the last Annual and Special General Meetings.

• Read the Annual Report of the Council.

Resolved,—That the Report of the Council be received and entered on the Minutes; and the Report, or such parts of it as the Council shall think fit, be printed for the use of the Members.

Read the Auditors' Report of the Accounts of the Society.

Resolved,—That the Auditors' Report be approved and signed by the President.

(The President having stated the vacancies in the Council and Auditors,

Resolved,—That Benjamin Austey, Robert Ridgell Bayley, Keith Barnes, John Coward, William Henry Palmer, Edward Rowland Pickering, John Innes Pocock, John James Joseph Sadlow, and John Young be and they are hereby deemed and declared to be elected Members of the Council, in lieu of those who go out of office by Rotation.

That James Leman be and he is hereby
desires and declared to be elected a Member
of the Council, in lieu of Thomas Wing, de-
ceased.

What Henry Lake be and he is hereby deemed and declared to be elected a Member of the Council, in lieu of Thomas Metcalfe, resigned.

That John S. Gregory be and he is hereby
 elected and declared to be elected President
 of the Society.

That John Coverdale be and he is hereby deemed and declared to be elected Vice-President of the Society.

That John Bridges, William Christohne, and Charles Dyer be and they are hereby deemed and declared to be elected Auditors of the Accounts of the Society, say to contribute to

It was moved by Mr. James Anderton, seconded by Mr. T. H. Bower.

And Resolved unanimously,

That the Members of the Incorporated Law Society present at this Annual General Meeting deeply regret the decease of Thomas Wing, Esq., who, for several years, was an able and zealous Member of the Council of this Society, and they desire to record their cordial sense of the honourable conduct and character of Mr. Wing throughout his professional life, which procured for him the general esteem and regard of all who had the pleasure of knowing him; either as a private friend or a professional advocate.

That the President be requested to offer the sincere condolences of the Members of the Society to the widow and family of Mr. Wing on the bereavement they have irreparably sustained, in the loss of a husband and a father, and the profession a most valuable and honourable member.

That the cordial thanks of this annual General Meeting be presented to Thomas Metcalfe, Esq., for the valuable services he rendered to the Society on its institution, and for his able and long continued support of its objects as a Member of the Committee of Management under the first Charter, and afterwards of the Council under the second Charter; and for his invariable courtesy to his professional brethren upon all occasions.

And the Members of the Society now present desire to express their great regret that Mr Metcalf's state of health has rendered it incumbent on him to retire from his seat in the Council, and hope that his valuable life may, by the mercies of a kind Providence, be spared for many years, and that he may enjoy in the bosom of his family uninterrupted happiness and domestic felicity.

That the best thanks of the Meeting be offered to the President, Vice-President, and Council, for their great attention, during the past year, to the affairs of the Society and the interests of the Profession in general.

That the thanks of the Society be given to Mr. Matgham for the invaluable services rendered by him as the Secretary of the Society, and for the courtesy and attention paid by him to all who have occasion to apply to him either for advice or assistance, especially to the junior members of the Profession.

(Signed) **RICHD. HARRISON, President.**

NOTE OF THE WEEK.

ELECTION OF THE CITY OFFICERS FOR
1852.

William Hunter, Esq., of the Ward of Coleman-street, has been elected Mayor for the ensuing year. The new Sheriffs of London and Middlesex are Thomas Cotterell, Esq., and

James Swift, Esq.

ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1851.

Queen's Bench.

Clarks' Names and Residences.

To whom Articled, Assigned, &c.

Acland, Sam. Lawford, 29, Frederick-st., Gray's-inn-road, Middlesex	Henry Charles Chilton, Chancery-lane
Adams, Edward, 10, Liverpool-ter., Islington; and Wilmington-square	W. S. Adams, George-street, City
Ailman, Geo., Joseph Oliver, 2, Beckford-place, Clapham-rd., Surrey	John A. Tilleard, Old Jewry
Andrews, Richard, 4, Spencer-st., Northampton-sq., Modbury	John Andrews, Modbury
Angel, Thos., 42, Upper-park-street; Islington	Thomas Hicks, 10, Clifford's-inn
Armstrong, Peasman, 23, Clarence-st., Islington; Newcastle-upon-Tyne	Wm. Dunn, Newcastle-upon-Tyne
Ashwell, John, jun., 12, Wilmot-st., Brunswick-sq., Middlesex	John Bowley, Nottingham; Wm. Ford, Lincoln's-inn-fields
Bailey, John Rand, North Leverton; Upper Vernon-street, Pentonville	George Marshall, East Retford
Baker, Alfred, 24, Camden-st., North; Market Deeping	Wm. Baker, Market Deeping; Thos. Roberts, do.; Francis Brown, do.
Baker, Edward, Harbourn	William Henry Reece, Birmingham
Baker, Geo., Audlem	Wm. Machin, Audlem
Baker, Hen. Goldney, Great Ormond-st.; Great Russell-st.; Lamb's-conduit-st.; Lower Calthorpe-st.	John Gidley, Exeter
Baker, John, Verulam-buildings	William Houghton, Verulam-buildings
Barker, John Hoyes, 38, Sidmouth-st., Regent-sq.; Taunton	Hen. Charles Trenchard, Taunton
Barnard, Alfred Fras., 5, Belinda-ter., Canonbury	Robt. Jackson, 41, Bedford-row
Barr, Fred. Horatio, Swinton-st., Gray's-inn-rd.; 53, Upper Marylebone-st.	Frederick Talbot, Bedford-row
Barrett, Chas. Prentice, Eton	S. Gwinnett Hornidge, Eton and Barton-crescent
Barrett, Geo. Edwin, 62, Stafford-pl., Fimlico	Theodore Courtenay Gidley, Crosby-hall-chambers
Bartlett, Wm. Smith, 23, Stanhope-st.; Albert-st., Mornington-crescent; Blakdown	Geo. Croft Vernon; Luke Minshall, Bromsgrove
Bassitt, Jos., 45, Stanhope-st., Gloucester-gate; Albert-st., Mornington-crescent	Hen. Fred. Lucas, Louth; Hen. Falkner, do.
Bateman, Horatio, 17, Chester-terr., Eaton-sq.; Boston; 2, New Boswell-court	Saml. Hen. Jebb, Lincoln
Batman, Hen. Wesley, Mount-parade, York	Robt. Hen. Anderson, York
Beat, Joseph, 34, Bernard-st., Bloomsbury; Kidderminster; 68, Chancery-lane	Wm. Briston, Kidderminster
Belward, Hen. Rich. Moyses, 7, Eastbourne-terr., Hyde-park	Octavius Dillingham Mordaunt, Bolton-street
Bencraft, Chas. Chichester, 55, Acton-st.; Barnstaple; Alfred-street, Bedford-sq.	R. J. Bencraft, Barnstaple; P. Karalake, Regent-st.
Benson, Jas., 8, Dean's-pl., South Lambeth; Birmingham	Wm. Palmer, Birmingham
Berners, Chas., 24, Percy-st., Bedford-sq.; Wakefield	Wm. Harrison Brown, Wakefield; Hen. Brown, Wakefield
Biggood, Thos. Fallows, 7, Church-terr., Kentish-tn.; Hardwick-pl., Harrington-sq.; Carey-st.	Thomas Biggood, Carey-street
Blackburn, Richd. Hen., Preston	Edmund Robert Harris, Preston
Blandy, Wm. Frank, Parliament-st.	George Faulkner, Bedford-row
Blundell, Wm., Coventry; Tudor Lodge, Kentish Town; Leamington; Hastings	Wm. Wilmot, Coventry
Briggs, John Hall Newton, 8, Brunswick-terr., Barnsbury-rd., Islington	John Huish, Derby; Wm. Hallows, Bedford-row
Briggs, Wm., 27, Piccadilly	N. C. Wright, Finsbury-place, South; A. F. Chamberlayne, Great James-st.
Bristow, Geo. Ledgard, 2, Stockwell-park-rd., Belgrave-st., Argyle-square	Alfred Lester, Exeter
Brown, Geo. Fowler, 6, Wharton-st., Clerkenwell; and Derby	H. M. Hawksworth, Ashby-de-la-Zouch; W. E. Mousley, Derby
Buckland, Thos., 3, Gray's-inn-sq.; and 67, Great Russell-street, Bloomsbury	Geo. Barker, Gray's-inn-square
Burgess, Geo., 7, New-inn	Edward Burgess, Bristol; Geo. Robins, New-inn
Burrell, Edwd. Montague, White Hart-ct., Lombard-st.	Simon Adams Beck, Ironmongers'-hall

- Barton, Fred. Merryweather, Belgrave-st. Argyle-sq.; and Watergate, Lincoln
 Bush, Jas. Day, 13, Queen's-place, Lambeth; Bath
 Calcott, Fr. Mowbray Berkeley, 7, New Ormond-st.; Eltham
 Calthrop, Thomas Dounie, 4, Upper Park-row, Blackheath-park; Blackheath
 Capes, Henry Hawkesley, Boroughbridge
 Carver, Wm. Hen., 3, Beaufort-street, Chelsea
 Chater, Wm., Clare
 Chatfield, Richd. Edwin, 20, Whitehall-pl.; Furnival's-inn; and Albert-street
 Cheese, Arthur, Castle Weir, Kingston
 Child, Sydney Chislow, 2, South Lambeth-pl.
 F. Burton, Lincoln; G. White, Grantham; J. Stuart, Gray's-inn
 Edwyn Dowding, Bath
 Charles Berkeley, Lincoln's-inn-fields
 John Scaith Rymer, Whitehall-place
 William Hirst, Boroughbridge
 John Eaden, jun., Cambridge
 Wm. Hen. Sams, Clare
 Chas. Chatfield, Austin Friars; Edwd. Knocker, Dover
 Chas. Meredith, Lincoln's-inn; Thos. Stephens Rogers, Kingston
 Francis Child, 62, Cannon-st.

[To be continued.]

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

House of Lords.

Copper and others v. Earl of Lindsey. Feb. 20, 24. June 2, 1851.

RAILWAY COMPANY. — AGREEMENT BY LANDOWNER NOT TO OPPOSE.—AMALGAMATION OF COMPANIES.—EFFLUXION OF TIME.—PLEA.

On error, the decision of the Court of Exchequer Chamber (2 Exch. Rep. 801) was affirmed, holding that a plea was bad to an action brought to recover from the provisional directors of a railway company certain moneys under an agreement, whereby inter alia, they covenanted for the payment of the amount within three months of the amalgamation of their railway with a competing line and under certain circumstances, on the ground that the payment of the money depended solely on the effluxion of the three months after the amalgamation, and not on the making of a portion of the line by the amalgamated companies on the plaintiff's estate, or the doing of any injury to the land.

THIS was an appeal from the decision of the Court of Exchequer Chamber, (reported 2 Exch. R. 801), reversing on error the decision of the Court of Exchequer in this case, (see 1 Exch. R. 579). The action was brought against the provisional directors of the Direct Northern Railway Company, to recover the sum of 6,000*l.* upon their covenant in an indenture dated 16th March, 1846. It appeared that there was another railway, the Great Northern, which was proposed to be made, and that the plaintiff below agreed to support the defendants' line and to oppose the latter, in consideration of which the defendants below covenanted that, if their bill should pass within six months from the date of the deed, they would pay the plaintiff the sum of 25,000*l.* in compensation for the injury to be done to his property, that if the bill of the Great Northern Company should pass within 18 months, the defendants would pay the plaintiff 15,000*l.* in one event and 5,000*l.* in another, and the plaintiff was to hand over to the defendants all sums which he might receive by way of compensation from the Great North-

ern, provided that if no act authorizing the Direct Northern to make their line should pass within six months, either party might determine the agreement by giving notice in writing, after which notice the agreement, and any article and thing therein contained (except the proviso and the covenant in relation to the payment of the plaintiff's costs) should be null and void. There was a further covenant, that if the company should be amalgamated, the amalgamated companies should, within three months after such amalgamation, pay certain sums of money in certain events, and the sum of 6,000*l.* if the line of railway followed the intended line of the Direct Northern without a branch to Stamford, and that all covenants and agreements of the defendants, so far as the same were applicable, should be observed by the amalgamated companies. The companies were amalgamated, and the railway followed the course of the Direct Northern without a branch to Stamford, and on the expiration of the three months, and the defendants' refusal to pay the 6,000*l.*, the present action was brought. The defendants pleaded, that no act of parliament was obtained within the six months, and that notice had been given to the plaintiff to determine the agreement, and that the railway had not passed through nor injured the plaintiff's lands. This plea had been held good by the Court of Exchequer, and bad by the Exchequer Chamber.

Sir F. Kelly, Hon. Stuart Wortley and Phipps for the appellants; *G. Turner and F. Bailey* for the respondent.

Parke, B., delivered the opinion of the judges, and after referring to the several covenants of the deed, said that the right to pay was not dependent on the making of a portion of the line by the amalgamated companies on the plaintiff's estate, or the doing the injury to the land, but is depended simply on the effluxion of the three months after the Amalgamation Act, and that therefore the plea was bad.

The *Lord Chancellor* and *Lord Brougham* concurred, and the appeal was dismissed and the judgment of the Court of Exchequer Chamber affirmed.

Master of the Rolls.

In re Oxford, Worcester, and Wolverhampton Railway Company, ex parte Rector of Kingham. July 12, 1851.

PAYMENT OF EXPENSES UNDER GENERAL INCLOSURE ACT OUT OF MONEY PAID INTO COURT BY RAILWAY COMPANY UNDER LANDS' CLAUSES' ACT.

An order was made on the petition of the rector of K. for payment out of a sum which had been paid into Court under the 8 & 9 Vict. c. 18, s. 69, for the compensation for injuries done by a railway company to the rectory lands, to defray the costs, charges, and expenses of putting into execution the 6 & 7 W. 4, c. 115, and the expenses of fencing, ditching, subdividing, and inclosing allotments made to the rector under the latter act.

UNDER the General Inclosure Act, 6 & 7 W. 4, c. 115, an inclosure of common lands had taken place in the parish of Kingham, Oxfordshire, and a portion was allotted to the rector, who, it appeared, had paid the Commissioner his charges and expenses and a further sum for fencing, ditching, subdividing, and inclosing his allotments. The Oxford, Worcester, and Wolverhampton Railway Company having paid into Court the sum of 400*l.* in respect of other lands belonging to the rectory which were injuriously affected by their railway, the rector now presented his petition seeking the payment of the expenses of the inclosure out of such sum.

By s. 46 of the 6 & 7 W. 4, c. 115, it is enacted, that "it shall be lawful for the said Commissioner or Commissioners, in case he or they shall be requested by writing under the hand or hands of any person or persons being tenant for life, or other person being in possession of, but not having the absolute estate or interest therein, to sell and dispose of any part or parts of the allotment or allotments belonging to such person or persons, for the purpose of defraying his, her, or their shares of the costs, charges, and expenses of putting into execution this act and the said recited act of the 41 Geo. 3, c. 109, and the expenses of fencing, ditching, subdividing, and inclosing such allotment or allotments;" and by the 8 & 9 Vict. c. 18, s. 69, that "if the purchase-money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking" from any "person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of 200*l.*, the same shall be paid into the bank," and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes:—(1st) "to pay in the purchase or redemption of the land tax, or the

discharge of any debt or interest on any mortgage affecting the land in respect of which such moneys shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes."

Boydell, Q. C., and Hale, in support.
The Master of the Rolls made the order as prayed.

First-Chancellor Knight-Memo.

In re London and Birmingham Extension, and Northampton, Daventry, Leamington, and Warwick, Railway Company, ex parte Gray. July 31, 1851.

WINDING-UP ACT.—CALL ON CONTRIBUTORIES TO MEET PRELIMINARY EXPENSES.—SUFFICIENCY OF FUNDS IN DIRECTORS' HANDS.

On appeal, the Master of the Rolls directed the discharge for a call on certain contributories who had signed the subscription contract or promised to do so, for payment of certain preliminary expenses, where a question as to the directors was raised as to the sufficiency of the funds in their hands received for deposits to meet the same, and had not been ascertained before the Master.

THIS was an appeal from the decision of Master Bant directing the payment of a call of 1*l.* 10*s.* per share on the contributories in class 1, who had executed the subscription contract, or agreed to do so, for the purpose of paying off certain debts found by the Master to be due, and consisting of bills of parliamentary agents and solicitors, the secretary's salary, advertisements, and witnesses' expenses before the Standing Orders Committee, and the costs of winding up.

W. T. S. Daniel and Cole, in support, on the ground that the managing committee had received more than enough to pay their expenses, and that they should first have accounted for the deposits.

Cropper, Meles, and Swift, for the official manager, contra.

The First-Chancellor said, that the order for a call must be discharged without prejudice in order that the question with the managing committee might be gone into before the Master. The costs to come out of the estate.

First-Chancellor Lord Cranworth.

In re Hirst's Trust. Aug. 1, 1851.

TRUSTEES' BELIEF. AGE. PAYMENT OF FUNDS OUT OF COURT.—SENTENCE FOR.

Order on petition for payment out of Court of moneys paid in under the 39 & 40 Vict. c. 96, to the petitioner, who was entitled to have them invested in a government security under a testator's will, and paid out for separate use without power of anticipation, she being unmarried and desirous of having the fund instead of the annuity. *Robson* appeared in support of petition for

payment out of Court of a sum of 2,000*l.* which had been paid in under the 10 & 11 Vict. c. 98, by the trustees of the will of Mr. George R. direct: The trustee directed the sum to be laid out and invested in the purchase of a government annuity for the life of the petitioner, *Mrs. Anne Chubbworth*, and to pay the annuity from time to time as it became due, but not by way of anticipation for her separate use, exclusively of any husband whom she might marry. The petitioner was not married, and was desirous of having the sum instead of the annuity. The learned counsel referred to *Tullett v. Armstrong*, 1 Beav. 1; 4 My. & Cr. 377; *Massey v. Parker*, 2 My. & K. 674.

K. Parker for the trustees, did not oppose. The Vice-Chancellor made the order as prayed.

Vice-Chancellor Turner.

Leslie v. Thompson. Aug. 5, 1851.

SPECIAL CASE UNDER TURNER'S ACT.—VENDOR AND PURCHASER.—CONDITIONS OF SALE.—ERRORS IN PARTICULARS AS TO ACREAGE.—COMPENSATION.

Under conditions of sale it was provided that, if any mistake or error should appear in the description of the property, or any error whatever in the annexed particulars of sale, such mistake or error should not annul the sale, but a compensation or equivalent should be given or taken as the case might require. Lot 1 was described as containing 70 acres, 24 perches, whereas it contained 80 acres, and lots 2, 3, and 4 comprised about 10 acres less than the quantity mentioned in the particulars. Held, on a special case, under the 13 & 14 Vict. c. 35, that the vendor was entitled to compensation in respect of lot 1, and the purchaser in respect of lots 2, 3, and 4.

This was a special case under the 13 & 14 Vict. c. 35, from which it appeared that upon the sale of certain property in Buckinghamshire, it was provided by the 11th condition that, if any mistake or error should appear in the description of the property, or any error whatever in the annexed particulars of sale, such mistake or error should not annul the sale, but (except where otherwise provided for by the conditions), a compensation or equivalent should be given or taken as the case might require—to be settled by two referees or an umpire. The defendant purchased four lots, and lot 1 was stated in the particulars to contain 70 acres and 24 perches; but it was found after the purchase to comprise 80 acres, and lots 2, 3, and 4 were stated to contain about 320 acres, whereas the acreage was only about 310. The question for the decision of the Court, whether the vendor was entitled to compensation in respect of the excess of acreage in lot 1, over the quantity specified by the particulars.

Malins, C. G., and *A. V. Prior* for the vendor, offering to pay compensation for the deficiency in lots 2, 3, and 4.

The Solicitor-General and Fryderyk for the purchaser, contra, on the ground the lots must be taken to have been sold by metes and bounds in the lump, and that the statement of acreage was surplusage.

The Vice-Chancellor said, that as the purchaser could not have enforced the performance of the contract, unless he submitted to compensate for the mistake, and the statement of the acreage showed that the vendor did not intend to sell in the lump, the purchaser was bound to make compensation in respect of lot 1, and the vendor in respect of lots 2, 3, and 4. Each party to bear their own costs.

Court of Queen's Bench.

Regina v. Lancashire and Yorkshire Railway Company. June 12, 1851.

MANDAMUS.—CONSTRUCTION OF BRANCH LINE.

Rule absolute for a mandamus on a railway company to construct a branch railway which they were authorised under their act to make, where the compulsory powers, which expired on 18 Aug. 1851, had been extended by the Railway Commissioners to 18 Aug. 1853.

This was a rule nisi granted on June 2 last, for a mandamus on the above company to construct a branch railway from the Manchester and Leeds railway at Salter Hebble to Huddersfield, which under their act (9 & 10 Vict. c. cxxx.) they were authorised to make. It appeared that the compulsory powers of the company, which expired under their act on Aug. 28, had been extended by the Railway Commissioners to Aug. 18, 1853.

Sir F. Kelly, *Peacock*, *G. C.*, *Wilkins*, *S. L.*, and *Tamlinson*, showed cause against the rule, which was supported by *Sir F. Thesiger*, *Knowles*, *G. C.*, and *Addison*.

The Court made the rule absolute.

Court of Common Pleas.

Helsham v. Blackwood and another. June 13, 1851.

LIBEL.—PLEA JUSTIFYING AS TO PART ONLY.—REPLICATION.

To an action for libel, published in reference to the trial of the plaintiff and to the duel in which the plaintiff's antagonist was killed, stating that it took place under aggravated circumstances, and calculated to injure the plaintiff in the public mind, the defendants pleaded that the plaintiff did feloniously, wilfully, and maliciously shoot his antagonist and gave him a mortal wound of which he died, and the plaintiff replied his acquittal by way of estoppel. On demurrer to the replication, the Court, without deciding as to whether the replication was good or not, held, that the plea was bad as only justifying the legal murder and not the aggravated circumstances alleged to be connected therewith in the libel complained of.

THIS was an action for a libel which had been published in *Blackwood's Magazine* for December, 1850, in reference to a duel between the plaintiff and a Lieutenant Crowther, who was killed, and to the trial which took place thereupon. The libel alleged that the duel took place under circumstances of aggravation which were calculated to injure the plaintiff in the public mind. The defendants pleaded that the plaintiff did feloniously, wilfully, and maliciously shoot the said Lieutenant Crowther, and gave him a mortal wound of which he died, to which the plaintiff replied the acquittal by way of estoppel. The matter now came on upon demurrer to the replication.

Peacock, Q. C., in support of the demurrer; *D. D. Keane*, contra, was not called on.

The Court said, that as the plea was bad because it professed to justify the whole declaration, but only justified a part and applied merely to the circumstances which constituted the legal murder and not to the circumstances of aggravation, it was unnecessary to decide whether the replication was rightly pleaded, and gave judgment for the plaintiff.

The matter was subsequently compromised on an apology being given and on payment of the costs.

Judges' Chambers.

(*Coram* Mr. Justice Patteson.)

Sheppard v. Beresford. Aug. 9, 1861.

IRISH INSOLVENT ACT.—OPERATION IN RESPECT OF ENGLISH DEBTS.

Held, that an insolvent who has been discharged under the 3 & 4 Vict. c. 107, (the *Irish Insolvent Debtors' Act*), is not liable to be arrested in England in respect of an English debt duly entered in his schedule.

In this case the defendant, Sir George de la Poer Beresford, had been arrested on a *ca. sa.* out of the Court of Queen's Bench in respect of a debt from which he had been discharged under section 65 of the *Irish Insolvent Debtors' Act* (3 & 4 Vict. c. 107.)

Lewis, of Ely-place, in support of the application for the discharge; *Gibbons*, contra.

Mr. Justice Patteson said, that the defendant must be discharged.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF WILLS.

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lunacy, p. 147.

Courts of Equity:

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, pp. 204, 246, 265.

Law relating to Trustees, p. 285.

Evidence, pp. 306, 326.

Jurisdiction in Suits for Discovery, p. 347.

Law of Property and Conveyancing, pp. 366, 385.

Law of Wills, pp. 406, 426.]

CHARITABLE REQUESTS.

1. The Court has jurisdiction upon a petition presented under Sir Samuel Romilly's Act, not only where the trustees of charity estates require directions to carry out a defined trust, but also where, although the application of future surplus funds has been already provided for by an act of parliament, the trustees ask for a reference to the Master, as to the expediency of applying for another act of parliament to authorise the application of the surplus in a different manner. *In re Shrewsbury Grammar School*, 1 H. & T. 403; 1 M.N. & G. 324.

Terms upon which, in cases of this kind, the Court allows attendance of parties before

the Master. *In re Shrewsbury Grammar School*, 1 M.N. & G. 324.

2. Property was bequeathed to a corporation upon certain trusts, for the benefit of the poor of the town, with a proviso, that if the corporation failed for one year to apply the trust property in a proper manner, it should be transferred to the corporation of L., for the benefit of Christ's Hospital. By a decree on information, the application of the trust property was varied, but a similar provision was inserted in case of the misapplication of the trust property. A misapplication having taken place, it was held that the gift over was not repugnant to the original gift, nor void on the ground of perpetuity; that the forfeiture was still operative, and that the claim of the plaintiffs (Christ's Hospital) was not barred by the lapse of more than 20 years from the time at which the misapplication of the trust property took place and was known to them, and that they were entitled to call for a transfer of the property. *Christ's Hospital v. Grainger*, 1 H. & T. 533; 1 M.N. & G. 460.

3. *Alienation of charity land.*—*Lease for 999 years.*—In 1699, a lease of charity land was granted for 999 years, at a rent very little more than had for some time been received for it. The lease covenanted to build upon the land. That lease was in 1849 set aside as to a part of the land comprised in it, on an information filed against the assignees of that part only; and he was held not to be entitled to any allowance in respect of the building which had been erected upon the land. *Attorney General v. Pilgrim*, 2 H. & T. 186.

4. *Decree.—Future rents.*—A schoolmaster retained all the rents of a charity estate, after making small fixed payments to the almshouse people. At the hearing, the Court held that he was not entitled to do so, and made a decree referring it to the Master to inquire what the charity estate and property consisted of, and to settle a proper scheme for the management of the estates and property, and "for the application of the future rents and profits of the school." No account was directed against the schoolmaster: *Held*, that "future rents" meant all those subsequent to the decree, and the schoolmaster having died before the scheme had been settled, the Court, on a supplemental information, directed an account against his personal representatives of the rents received subsequent to the decree. *Attorney-General v. Tufnell*, 12 Beav. 35.

5. *Lease for 999 years.—Setting aside.—Allowance for building.*—Lease of charity land for 999 years, subject to a fixed rent of 10*l*. and a covenant to lay out 300*l*. in building, set aside after 150 years, and an allowance for the building refused. *Attorney-General v. Pilgrim*, 12 Beav. 57.

Case cited in the judgment: *Attorney-General v. Green*, 6 Ves. 452.

6. *Alienation of estate.—Onus of proving validity.*—An alienation of charity property may be valid, but the onus of proof lies on the alienor. *Attorney-General v. Pilgrim*, 12 Beav. 57.

Case cited in the judgment: *Attorney-General v. South Sea Company*, 4 Beav. 453.

7. *Ordinances avoided, though made under charter and act of parliament.*—Ordinances made by A., B., & C., under a power contained in a royal charter, for the management of charity property, followed by an act of parliament, confirming all ordinances made or to be made, by A., B., & C., held, under the circumstances, to be unauthorised and not confirmed, and the same, after a great lapse of time, set aside. *Attorney-General v. Wyggeston's Hospital*, 12 Beav. 113.

8. *Management of lease on fines.*—A charity was established in the reign of Hen. 8, for two chaplains and twelve poor. In 1572, Queen Elizabeth, by letters patent, ordained, that the chaplains and poor "in omnibus et per omnia, se gerent, exhibebunt, comiserabunt et effigentur, juxta ordinationes, regulas et statuta, in hac parte," to be made by A., B., & C. In 1574, A., B. & C., accordingly made regulations, giving to the master the whole management of the charity property, and authorising him to let on fines, and appropriate the fines to his own use. In 1576, an act of parliament confirmed the charter of 1572, and the ordinances made or to be made by A., B., & C. By letting on fines, the property, which was worth 7,000*l*. a-year, produced, on an average, only 1,200*l*., nearly half of which consisted of fines, and was received by the master. The Court held, that this ordinance was not authorised by the charter or confirmed by the act of

parliament, and that even if it were, still that this proceeding being shown, in the lapse of time, to be prejudicial to the objects of the charity, the Court would direct a new mode of management to be adopted. *Attorney-General v. Wyggeston's Hospital*, 12 Beav. 113.

9. *Dissenters.—Deed.*—In 1704, Lady Hawley, an English Protestant Nonconformist, conveyed estates in England to trustees, (all of whom appeared to be resident in England, and some of whom at least were Protestant Nonconformists,) in trust, for such poor and godly preachers for the time being of Christ's Holy Gospel, and of such poor and godly widows for the time being of such preachers, as the trustees for the time being should think fit; for promoting the preaching of Christ's Holy Gospel in such manner and in such poor places as the trustees for the time being should think fit: for educating such young men designed for the ministry of Christ's Holy Gospel as the trustees for the time being should think fit; and for relieving such godly persons in distress, being fit objects of her own and the trustees' charity, as the trustees for the time being should think fit; and she directed that the trustees for the time being should, in their dispositions and distributions of the aforesaid charities, have a primary respect to such objects thereof as aforesaid as were then or should afterwards be in York, Yorkshire, or other northern counties in England, not excluding those in other places and counties, as the trustees for the time being, from time to time, should think fit. *Held*, by the Vice-Chancellor, that orthodox English dissenting ministers and members of congregations, essentially and substantially, in doctrine and discipline, of the same sort as the orthodox dissenting congregations which existed in England, in 1704, and, therefore, that orthodox English dissenting ministers and members of Baptist, Independent, or Congregational, and Presbyterian congregations in England, which were not in connexion with or under the jurisdiction of neither the kirk or the secession-church of Scotland, were alone entitled to participate in the benefits of the charity, and that such of the trustees as were members of Presbyterian congregations in England which were in connexion with the kirk, or with the secession-church, ought to be removed.

The last-mentioned trustees appealed from his Honour's decree; and, after the appeal had been opened, but before the argument was concluded, a decree was drawn up, at the request of the defendants, and with the approbation of the Attorney-General and the sanction of the Lord Chancellor, in terms which admitted the ministers and members of Presbyterian congregations in England in connexion with the kirk and the secession-church of Scotland, to participate in the administration and benefits of the charity. *Attorney-General v. Wilson*, 16 Sim. 210.

10. *Grammar-school.—Boarders.*—Trustees.

—The statutes of Manchester Free Grammar-school declared that the master and usher (for

whom stipends were provided by the foundation-deeds) should teach, freely and indifferently, every scholar coming to the school, without any money or other rewards taken therefor; that no scholar, of what county or shire soever, should be refused; that no scholar should bring meat or drink into, nor should any one lodge in, the school; that vacancies in the tutorship should be supplied by honest gentlemen and honest persons within the parish of Manchester; and that the trustees should have full power to augment, increase, expound, and reform the provisions of the statutes only concerning the schoolmaster, usher, and scholars.

The master and usher had, for several years, taken boarders, and the boarders had participated in all the benefits of the charity; and the trustees of the school had been generally, noblemen and gentlemen residing, not in the parish of Manchester, but in Lancashire and the adjoining counties.

Held, that the master and usher ought not to be allowed to take any more boarders; and that the trustees thereafter to be appointed, ought to be honest gentlemen and honest persons residing within the parish of Manchester, and that persons who occupied and carried on business in manufactories, &c., in the town or parish, and had dwelling-houses within six miles of the school-house, were to be considered as being within the parish, for the purpose of being eligible to be trustees. *Attorney-General v. Earl of Stamford*, 16 Sim. 453.

Case cited in the judgment: *Attorney-General v. Earl of Devon*, 15 Sim. 193.

11. *Mortmain.—Leaseholds.*—A testatrix possessed of leaseholds and pure personalty, left the whole of her property to her brother. Her pure personalty was more than sufficient to pay her debts and funeral and testamentary expenses. Her brother died nine days after her, having left the whole of his property to charities. His executors took out administration to the testatrix and sold the leaseholds. *Held*, that the charities were entitled to the proceeds under his will. *Shadbolt v. Thornton*, 17 Sim. 49.

12. *Visitor.*—In the reign of Henry 7, a hospital was founded at Stamford by W. Browne, for a warden, confrater, and twelve poor persons. By letters patent of James 1, the hospital was incorporated by the name of the warden, confrater, and poor persons of the hospital; and his Majesty granted that the Bishop of Lincoln for the time being should, from time to time, revise, examine, and inquire into the ancient statutes of the hospital, and abolish so many of them as were repugnant to the laws of England, and make other statutes as well concerning the divine service to be celebrated in the hospital, as concerning the government and direction of the warden, confrater, and poor to be supported in the hospital, as should appear to the bishop to be salutary, not being repugnant or derogatory to the ancient statutes of the hospital, or to the laws of Eng-

land; and to revoke, alter, or make new, as to the bishop should, from time to time, appear more expedient, still, and each of any of them so made or to be made. *Held*, that a general, visitatorial power was not given to the bishop, but that the revenues of the hospital were subject to the jurisdiction of the Court. *Attorney-General v. Browne's Hospital*, 17 Sim. 137.

13. *Perpetual annuity.*—By direction by will to pay into a certain bank, as a principal sum of 100*l*. for the sole use and benefit of all the ministers and members of the churches now forming upon the apostolical doctrine brought forward by the late Edward Irving, who may be persecuted, aggrieved, or in poverty, for preaching or propounding those doctrines, or half the sum may be appropriated for the benefit of the church founded by the late Edward Irving in Newman street. *Held*, to be a valid charitable bequest of a perpetual annuity. *Attorney-General v. Jones, & Others*, 22 L. J. 100.

14. *Unnecessary for objects to be shown repugnant and enduring.*—Cy pres—it is not necessary to constitute a good charitable bequest, that the objects to be benefited must be shown to be of necessity a permanent and enduring class, for, if the objects should fail, the Court may administer cy pres. *Attorney-General v. Lupton, & Lupton*, 22.

LEGACIES.

1. *Absolute gift.*—If a testator leave a legacy absolutely, as regards his estate, but restrains the mode of the legatee's enjoyment of it, to secure certain objects for the benefit of the legatee, on failure of such objects, the absolute gift prevails; but if there be no absolute gift as between the legatee and the estate, but particular modes of enjoyment are prescribed, and those modes of enjoyment fail, the legacy forms part of the testator's estate, as not having, in such event, been given away from it.

The intention of the testator, that the gift should be absolute as between the legatee and the estate, is, in all cases of construction, to be collected from the terms of the will, and not from an expression or words which, standing alone, would constitute an absolute gift. *Larsence v. Tierney*, 2 H. & T. 115; 1 M. & G. 551.

Cases cited in the judgment: *Scrimm v. Weston*, 10 Bear. 200; *Gumpers v. Gumpers*, 3 Phil. 107; *Campbell v. Brownrigg*, 3 Phil. 301; *Winckworth v. Winckworth*, 4 Bear. 576; *Hulme v. Hulme*, 9 Sim. 644; *Mayer v. Townsend*, 3 Bear. 443; *Whitall v. Dudin*, 2 J. & W. 279; *Carver v. Bowles*, 2 Russ. & M. 301; *Kempf v. Jones*, 2 Keen, 736; *Leake v. Robinson*, 3 Mer. 363.

2. *Intention of testator.*—Where the last expressions in a will are ambiguous and capable of two constructions, the other parts of the will, dealing with the whole property under any circumstances which might arise, are very important for consideration, in each of the construction to be put on those expressions, and determining the intention of the testator.

W. v. Thorne, 5 H. & T. 125; 1 M. & C. 551.

3. *Cumulative.*—By his will the testator bequeathed his residue between Ann Sarah Parker and ten other persons (naming them). Two of the legatee having died, the testator, by a codicil, gave the residue between eight persons, naming them, and Ann Sarah Parker, G. F., and Ann Parker. It appeared that Ann Sarah Parker and Ann Parker were the same person. Held, that she was entitled to one-tenth, and not to two-tenths of the residue. *Read v. Grayson, 19 Beav. 583.*

4. *Maintenance.*—Interest on expectancy.—A testator, standing in loco parentis, gave to trustees a legacy of 4,000*l.*, on trust to pay it to A. B. on his attaining 21. He authorised them to raise it by mortgage of his real estates; and out of the moneys thereby bequeathed, to raise such sums, not exceeding the interest at 4 per cent. of the expectant portion, as to them should seem sufficient for maintenance: Held, that the legatee, during minority, was entitled to maintenance only, and not to the whole amount of interest on the legacy. *Rudge v. Winnick, 12 Beav. 567.*

5. *Priority.*—*Abatement.*—*Annuity.*—Testator gave all his property to trustees, in trust to pay his debts and funeral and testamentary expenses, and to invest the residue in the funds, and out of the interest and dividends, to pay certain annuities to his daughter and other persons, and, after payment of them, to pay the remainder of the interest and dividends to his wife, for life; and he directed that, if his daughter should have a child living at the decease of his wife or born afterwards, her annuity should cease, and that his trustees should raise 20,000*l.* out of his trust estate, and hold it in trust for his daughter for life, and after her death, for her children, and if the children should die under 21, that it should sink into his residuary estate thereafter disposed of: and he further directed that, after the decease of his wife, his trustees should pay the sum of 5,000*l.*, part of his residuary estate, to such person, &c., as his wife should appoint by her will: and, subject to the trusts of his will, he gave the residue of his trust estate to his trustees and certain other persons.

The testator's property was insufficient to pay the annuities and the 5,000*l.* in full: Held, taking the whole of the will together, that the annuities were to be paid in priority to the 5,000*l.*, and, if necessary, out of the corpus of the testator's property. *Miller v. Huddleston, 17 Sim. 71.*

6. *Priority.*—*Abatement.*—Testator gave legacies to different persons, and an annuity for the personal maintenance and support of his brother, and directed the payment of it to commence on the first half-yearly day after his death, and the legacies to be paid at the expiration of two years after that event, or as much sooner as the circumstances of his estate would permit, but, without interest in the mean time. The testator's property was insufficient to pay the legacies and annuity in full:

Held, that the annuity was not entitled to priority over the legacies, but must abate, proportionally, with them. *Ashburnham v. Ashburnham, 16 Sim. 186.*

7. Testatrix bequeathed her personal estate to trustees, in trust, amongst other things, to pay and apply 800*l.* in and upon the education of her godson, who was an infant: Held, that the whole of the 800*l.* was payable at once, with interest from the end of the first year after the death of the testatrix. *Noel v. Jones, 16 Sim. 309.*

8. Testator bequeathed to his daughter, 15,000*l.*, to be kept in trust by his executors till she should attain 21, or marry with the consent of her mother and half of his executors then living, whichever might happen first, when the sum, with the accumulated interest, was to be settled on her. The daughter attained 21, without having married.

Held, that the legacy was not directed to be settled, except in the event of her marrying under 21, with the consent of her mother and half of the testator's executors; and that, as the legacy was, in the first instance, given to her absolutely, she was entitled to it absolutely. *Arnold v. Arnold, 16 Sim. 404.*

9. *Vesting.*—Testator gave 2,000*l.* to trustees in trust to pay the interest to his daughter, for life, and, after her decease, in trust to pay the principal unto, between, and amongst all her children, as and when they should attain 21, in equal shares, "to whom I give and bequeath the same accordingly."

The testator's daughter had only one child, and that child died an infant.

Held, that the 2,000*l.* vested in the child on its birth. *In re Bartholomew's Trust, 16 Sim. 585.*

10. *Exoneration.*—Testator gave 1,500*l.* to his illegitimate son, to be paid, with interest, within 12 months next after his decease, and he charged that sum upon his farm called L., which, he added, was then rented for 100*l.* a year, and which he purchased before his marriage, and was not in settlement or otherwise encumbered. And he gave other legacies, and directed, as to some of them, that they should be paid by his executors: and he charged his real estates with the payment of his funeral and testamentary expenses and debts, in aid of his personal estate. By a codicil he confirmed, to his illegitimate son, all devises, gifts, by his will, made to him; and desired that all his (the testator's) debts, annuities and legacies (except two annuities thereby given to A. B. and S. D.) should be paid, in the first place, out of any monies he might die possessed of in the 3*l.* per cent. consols, as far as they would extend; and he charged his farm called R., with the payment of all such debts, annuities and legacies (except as aforesaid) in aid of his monies in the 3*l.* per cents.: Held, that the 1,500*l.* was not charged on the farm called L., exclusively and in exoneration of the testator's personal estate; but that, the consols were to be applied first, the farm called R. next, the

testator's general personal estate next, and the farm called *J.*, last, in payment of it. *Reams v. Reams*, 17 Sim. 102.

11. *Substitution*.—Testator gave the whole of his personal property, after payment of his debts, to his wife during her widowhood; remainder to his son, his only child; and, if his son should die under 21, he expressed it to be his wish to give 500*l.* to each of his brothers and sister, Joseph, James and Mary, and any further surplus to be equally divided between these, my brothers and sister, or their legal heirs and successors." The testator's son survived him and died under 21. His brother Joseph died in his lifetime.

Held, that the gift of the further surplus was not a residuary gift, but was a gift of the surplus of the testator's property after the three sums of 500*l.* each should be subtracted from it: and that the legal heirs and successors of the brothers and sister were not intended to take unless all of them died so as not to take; and, consequently, that there was an intestacy as to the 500*l.* and the share of the further surplus given to Joseph. *Gibson v. Hale*, 17 Sim. 129.

12. "*Pay, distribute and divide*."—*Legal representative*.—*Next of kin*.—*Substitution*.—The testator, after directing his personal estate to be invested, gave the income of the same and of his real estate to his wife for her life, and directed that after her death his trustees should sell his real estate, "and pay, distribute, and divide" the moneys thence arising, and the money at interest, and he thereby gave and bequeathed one-third thereof unto his cousin *J. S.*, "if he should be then living, but if he should be then dead, unto his legal representative, or representatives, if more than one, share and share alike." *J. S.* died in the lifetime of the testator's widow, leaving a widow and children: *Held*, that, upon the death of *J. S.*, his widow and children, as the persons who would, in case of intestacy, be entitled to his personal estate, according to the Statute of Distributions, took vested interests in the third of the residue in equal shares, as tenants in common. *Smith v. Palmer*, 7 Hare, 226.

Cases cited in the judgment: *Rowland v. Gorsuch*, 2 Cox, 187; *Cotton v. Cotton*, 2 Beav. 67; *Walker v. Lord Camden*, 16 Sim. 329; *Booth v. Vickers*, 1 Coll. 6; *Leeming v. Sherratt*, 2 Hare, 14; *Holloway v. Clarkson*, 3 Hare, 521; *Packham v. Gregory*, 4 Hare, 396.

13. *Gift of personal estate to eldest sons and their issue male*.—*Absolute interest*.—Gift of stock in public funds, upon trust to pay the dividends to the four brothers and two sisters of the testator, in equal shares, for their respective lives, and after their respective deceases, to pay the dividends unto and amongst the eldest sons or son of his said brothers, and the survivors or survivor of them, for their lives or life, in equal shares and proportions, upon their attaining 21, with a provision for maintenance in the mean time; and after the decease of such eldest sons or son, to pay the said dividends unto and amongst the eldest male issue only or the time being of their bodies, *ad infinitum*,

for ever: *Held*, that the bequests to the brothers and sisters of the testator were valid.

That the bequests in remainder to the four eldest sons of the four brothers, each of whom had a son living at the death of the testator, were valid; but that such eldest sons took absolute interests in their several shares of such stock.

That, according to the language of the will, the issue of the nephews would take, if at all, as purchasers; but if the limitation of their issue male should be construed as words of limitation, the nephews would have taken a life estate only. *Harvey v. Towell*, 7 Hare, 231.

14. *Specific or general legacy*.—If it be doubtful on the words of a will, whether a specific or general legacy is given, the rule of the Court is to lean to the construction which makes the legacy general; but this rule does not involve the proposition that the Court is to address itself to the construction of a will with any proposition one way or the other. *Sawyer v. Sawyer*, 7 Hare, 382; *Jones v. Sims*, ib. 382.

Case cited in the judgment: *Lovell v. Knight*, 3 Sim. 275.

15. *Specific or demonstrative*.—A bequest of 5,000*l.* consols, with a direction that, if the testatrix should not have sufficient stock to answer the legacy, her executors should, out of her residuary estate, purchase enough to make up the deficiency: *Held*, to create a specific, and not a merely demonstrative legacy. *Townsend v. Martin*, 7 Hare, 471.

16. "*Household furniture*."—"Jewels."—Telescopes, held to pass under the words "household furniture."

Under a bequest of household furniture, pictures and books, which might be, at the testator's decease, in, upon, or about his mansion: *Held*, that pictures removed from the mansion, and in the hands of a picture dealer, to be cleaned, and books sent to be repaired, passed, but not articles purchased for the mansion but not sent home at the testator's decease.

Bequest of "jewels," held to pass masonic orders, and silver flagree ornaments. *Lord Brooke v. Earl of Warwick*, 2 De G. & S. 425.

17. "*Debts secured by mortgage*."—*Quare*, whether a debt secured by a deposit of gems, with a written memorandum empowering the creditor to sell if default were made in payment by a day fixed, passed under the will of the latter by the description of "debts secured by mortgage." *Lord Brooke v. Earl of Warwick*, 2 De G. & S. 425.

18. *Substitution*.—A testator bequeathed personal estates to the testator's wife for life, and after her death to his brothers and sisters as tenants in common; but, if any of his brothers and sisters should die before they became entitled to their shares, then the testator bequeathed the share of him or her so dying to his or her children: *Held*, that a brother of the testator who survived him, but died before the tenant for life, became entitled absolutely. *Henderson v. Kennicot*, 2 De G. & S. 492.

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SATURDAY, OCTOBER 11, 1851.  
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LAW REFORM.—

THE LORD CHANCELLOR AND THE APPEAL JUDGES.

In "*The Times*" of Wednesday will be found one of a series of articles appearing in the columns of our eminent and influential diurnal contemporary, on behalf of what it calls *Law Reform*, but designs to be *Law Revolution*. That there is occasional truth in these articles, is indubitable; but no one with the slightest practical knowledge can fail to see, that they are those of a theoretic inexperienced person, familiar enough with those legal topics which have attracted public discussion, and often placing them in an *ad captandum* point of view; but with the vast complexities of British jurisprudence, the writer is manifestly unfamiliar.

To this point we may recur on a future occasion: but on the present, we shall briefly advert to two topics in the article in question, of a somewhat personal nature. We allude to the unjustifiable comments upon the Lord Chancellor, and another eminent person, Vice-Chancellor Knight Bruce, who has committed the crime of having shown himself worthy of the distinction generally supposed likely to be conferred upon him, of being appointed one of the two Chancery Appeal Judges. Our contemporary's attempt to disparage the signal public services and judicial character of the Vice-Chancellor Knight Bruce, so justly and universally applauded, and by none more warmly than by Lord Brougham, is ungracious and unwise, and calculated to deprive our contemporary's law speculations of the value which he would desire to have ascribed to them.

It is experienced, acute, and cautious judges on whom is first imposed the hard duty of endeavouring to extract a meaning out of crude and precipitate acts of parlia-

ment, and obviating, if possible, the widespread injury and ruin which they are too surely calculated to inflict on suitors, that is the public. A popular member of either House of Parliament may contrive to get an act passed with acclamation; he is then complacently satisfied; and it is *others* who have to deal with his mistaken legislation and their predicted consequences. Vice-Chancellor Knight Bruce may therefore smile at *The Times* and its lucubrations. So also may the Lord Chancellor, who must be somewhat amused at finding himself suddenly assailed, for a conspicuous and noble instance of judicial impartiality and integrity, in appointing a political opponent to a very high judicial situation, simply because he was the best and fittest man to appoint! And the Lord Chancellor and the new Appeal Judge are to be *Arcades ambo*,—twin opponents of Law Reform in the House of Lords!

It grieves us to see a Chancellor of Lord Truro's amiable personal character, superior intellect, profound and extensive legal acquirements, prodigious though unostentatious industry, and unimpeachable integrity, thus systematically misrepresented, because he will not impress the sanction of the Great Seal on every scheme of pseudo law reform which is so constantly, so eagerly, and so ambitiously forced upon him. We admire the patient manliness with which he holds his own course,—satisfied with the conviction and gratified by the constantly increasing evidence of the fact, that his judgments, if not precipitate, are solid and righteous, and will bear the test of the severest legal scrutiny. Not many weeks ago, three eminent legal persons were conversing together on the subject of the Lord Chancellor's judgments; when one of them, pre-eminently qualified to form, and entitled to

express, such an opinion, observed,—“Lord Truro may not be so quick as others who have sat longer where he is, but all his judgments are right—there is no denying *that*.”¹

PROFESSIONAL REMUNERATION.

AD VALOREM CHARGES. — PRACTICE IN SCOTLAND.

IN a recent number we adverted to the several propositions for improving the mode of remuneration to solicitors, extracted principally from the evidence of the witnesses examined before the Select Committee of the House of Lords.² Some of those suggested improvements have the advantage of experience derived from the practice of our brethren in Scotland. We find that the writers to the signet and the solicitors in the Courts of Scotland charge for their professional services partly by the length of the deed or instrument prepared and partly by an *ad valorem* commission, or *per centage* on the property, in relation to which their skill and labour are exerted.

Such of our readers as have been engaged in conveyancing transactions in Scotland, are aware that the remuneration of the practitioners there is considerably higher than in England.³ In the business before the Superior Courts, the fees are also greater than those allowed in the Courts of Westminster. Whether in other matters the charges of the profession are also of unequal amount, we are not at present aware; but this inference we may safely draw,—that as the Scottish people know the value of money as well at least as others, and there is abundant competition amongst the lawyers, we may be sure they are not overpaid. The sooner, therefore, that we take a leaf out of their book, the better.

Notwithstanding all the outcry against the costliness of our legal proceedings, every reformer who possesses any acquaintance with the subject, admits that on the whole the profession is not overpaid. The evils complained of mainly consist of the length and verbosity of our proceedings, their dilatory

course, and uncertain termination. The rate of charge,—the six-and-eightpence per hour or per sheet,—is not at the root of the objection. If the suit, or action, or business, could be despatched in a short time, the lawyer would be better paid and the suitor would take no objection to the charge.

Let it here also be remembered that other professional men are paid at a much higher rate than the lawyers. The architect and the engineer, who cannot be placed in a higher rank than the attorney and solicitor, receive a per centage which in the result much surpasses the remuneration of the latter. Again, the fees of surveyors, auctioneers, and accountants, are allowed at a much higher rate than solicitors. The public, in these cases, are aware of and recognize the usage which has long prevailed; and if the charges for legal services could be brought to the same certain standard, it may reasonably be anticipated that the present prejudices in the public mind would be removed.

When it is considered, indeed, that a solicitor must necessarily serve a clerkship of several years—must undergo a strict examination—make large payments for stamp duties and premium—and provide an expensive library and establishment—(to say nothing of his annual tax)—we cannot believe that the public will expect a skilful and respectable solicitor to be paid less than accountants or auctioneers, who require no legal qualification, no investment of capital, and incur scarcely any responsibility. We entertain a confident opinion that when the claims of our profession are brought fully before the public, amidst the changes which are projected, those claims will be allowed.

As precedent and example have much influence on such occasions, we shall now proceed to state the several classes of professional charge which have been long established in Scotland and which may assist in settling a plan applicable to the English practitioner, and which may fairly remunerate him for his skill and learning, his labour and responsibility. In estimating the value of professional services, it will be observed in the following statement that the length of the papers charged for is not in certain cases excluded from the computation, but forms an ingredient in fixing the amount to be allowed. It is evident that where an instrument is *unavoidably* of great length, the labour is of course increased; and so far it must be erroneous, (as

¹ This incident we had from one who was present on the occasion alluded to.

² See page 409, *ante*.

³ It has often been observed in arranging and completing marriage settlements, where part of the property was in Scotland, and solicitors there as well as in England were employed, that the emoluments north of the Tweed have much exceeded those of the south.

some contend for,) to exclude the consideration of "length" altogether. In justice, all the circumstances of difficulty and labour ought to be taken into consideration.

1. Fees allowed for drawing deeds, obligations, indentures, and other writings, *not chargeable ad valorem*, inventories relative to such deeds, &c. :—

"If in the English language, first sheet of 250 words, 10s.—each other sheet 6s.

"If in Latin, first sheet 20s.—each other sheet 12s."

"Going through and arranging title-deeds to be charged in complex cases according to the time occupied, (at 6s. 8d. per hour), besides the fees for drawing the inventories.

"Copying papers 1s. for each sheet of 250 words. Engraving, first sheet 2s. 6d.—each other 1s. 6d."

Memorials, cases, inventories, and other papers not chargeable as deeds are—

"For the first sheet of 250 words 6s., and each other 4s."

2. Fees allowed relating to the *sale of heritable property* :—

Articles of Roup—charged according to length: (6s. for first 250 words; 4s. each other.)

Minutes of Sale and Bond for the price—according to the length. The deed to be drawn by the seller's agent and paid for by the purchaser.

[This would be 10s. for first, and 6s. each other sheet of 250 words.]

Disposition (or Conveyance).—To the purchaser's agent, for drawing the deed, and final revision, and adjustment of it, where the price does not exceed 2,000*l.*, for each 100*l.*, or part of 100*l.*, a fee of 10s. 6d. The price exceeding 2,000*l.*, but not exceeding 5,000*l.*, the above rate for the first 2,000*l.*; and for every additional 100*l.* 5s. 3d. The price exceeding 5,000*l.*, the above rates for the first 5,000*l.*; and for every additional 1,000*l.*, 1*l.* 11s. 6d.; besides *regulation fees** for drawing the deed, according to the length, where the price exceeds 5,000*l.* To the seller's agent, for revision of the deed and adjustment of it, one-half of the above fees *ad valorem* only.

"The purchaser's agent draws the deed. The seller's agent revises it. Both concur in the final revision and adjustment. The *ad valorem* fees payable to the two agents are divided

* It will be seen that this rate of charge for deeds is almost double the amount allowed in England.

These allowances are also higher. It will be observed, that instead of reckoning by the folio of 72 words, the charge is made per sheet of 250 words.

The regulation fees are calculated as above, viz., 10s. for the first 250, and 6s. for each other 250 words.

able into three parts, whereof two are paid by the seller, and one by the purchaser. One part is paid by the seller for drawing. Two parts are paid, one by each party, for revision and adjustment. The two parts due by the seller are paid to the purchaser's agent, and the first due by the purchaser is paid to the seller's agent.

"The result is the same as it would be if the seller were to pay the purchaser's agent the fees of drawing, and his own agent the fees of revision and adjustment, and if the purchaser were to pay his own agent the fees of revision and adjustment on his part, but the rule adopted creates two transactions only, instead of three."

3. Fees of grants, original feu-charters, feu-contracts, and building leases :—

"To be charged according to the rate payable to the purchaser's agent in a 'disposition' (or conveyance) estimating the price or sum paid (if any) and 20 years' purchase of the feu-duty, as the value of the subjects. In the case of bilateral deeds of this class, the total expense to be equally divided between the parties.

"The superior (or landlord's) agent draws the deed. The vassal (or tenant) pays for it."

For charters by progress, and precepts of *clare constat*, where the subject is an *irredeemable* right, the charges are—

"If the value of the property, (estimated at 20 years' purchase of the present rent or feu-duty payable to the guarantee, or of the annual value, if the property be in the natural possession of the grantee), shall not exceed 1,000*l.*, the usual *regulation fees*. If it shall exceed 1,000*l.*, one-third of the fees *ad valorem* payable to the purchaser's agent in a 'disposition,' besides *regulation fees*, according to length. But in properties from 1,000*l.* to 2,000*l.* the total charge shall not exceed 5*l.* 5s. And from 2,000*l.* to 3,000*l.*, 7*l.* 7s.; unless the *regulation fees per sheet shall amount to more.*"

Fees where the subject-matter is an *adjudication* or other *redeemable* right, the charges are the same as the last preceding.

"But as in the case of adjudications, a large estate may be adjudged for an inconsiderable debt, or a small estate for a large debt, it shall be optional to the creditor, whether the fee shall be calculated on the value of the subject, or the sum in the adjudication. For engraving in cartulary, 2s. 6d. per sheet, to be charged in addition to the fees, and to be paid by the vassal.

"The superior's agent draws the deed. The vassal pays for it."

4. The fees of *securities for money lent* and relative deeds are—

Personal Bonds.—For each 100*l.* or part of 100*l.*, 10s. 6d.

Heritable Bonds.—The same, adding the

regulation fees of drawing the deed according to the length when the loan exceeds 5,000*l*.

Bonds of Annuity, whether personal or heritable.—The same charge, holding the price paid for the annuity as the amount of the loan.

Bonds of Corroboration.—Where additional security is given, whether personal or heritable, or where the interest then due is accumulated with the principal, to be charged at one-third of the fees of a personal bond, upon the sum in the bond of corroboration, besides regulation fees, according to the length. Where the bond is merely granted for the purpose of binding the heir of the original debtor, to be charged only at the regulation fees according to the length.

For obtaining the loan of money, the borrower's agent to be paid by his own client, half the sum payable to the lender's agent, for preparing the bond,—which includes revisal of the bond. The whole of these to be written by the agent of the grantee, and paid by the grantor.

Discharges and renunciations of heritable debts; and discharges of debts constituted by personal bonds, except where the debt is paid by the original borrower to the original lender.

"Where the sum is under 500*l*., regulation fees; where above that sum, double the regulation fees.

"To be written by agent of debtor, and paid by creditor, unless otherwise stipulated.

Discharges of Legacies.—One-half per cent. of the legacy, if below 200*l*.; if above that sum, one-half per cent. for the first 200*l*., and one-fourth per cent. for all above.

"To be prepared by agent for testator's successors, and paid by the legatee.

Assignations and translations of personal debts, and conveyances of heritable debts.—Where the transaction is negotiated as a loan, the same fees are chargeable as on an original bond. Where that is not the case, to be charged as renunciation, &c.

"To be written by agent of grantee, and paid for the grantor."

5. Fees on preparing family settlements, —viz., deeds of entail, trust dispositions, testamentary deeds and bonds of provision:—

"The regulation fees according to the length of the deed, where the value of the property settled does not exceed 500*l*.; double regulation fees where the property exceeds 500*l*., and does not exceed 2,000*l*.; and treble where it exceeds 2,000*l*.

"In the case of entail and other settlements of landed estates, charges may be made also for attendances and correspondence.

Marriage contracts.—To be charged according to the total amount of the jointure and other income, provided and secured to the wife or husband or both. Where such income does not exceed in the whole 30*l*., three guineas; 30*l*. to 50*l*. five guineas; 50*l*. to 100*l*. eight guineas; 100*l*. to 150*l*. ten guineas; 150*l*. to 200*l*. twelve guineas; 200*l*. to 250*l*. fifteen

guineas; 250*l*. to 300*l*. twenty guineas; and for every 100*l*. beyond 300*l*. up to 1,000*l*. five guineas. Beyond 1,000*l*. for every 100*l*. two guineas and a-half, besides the regulation fees of drawing according to the length.

"To be prepared by the agent for the wife and paid for by the husband."

6. Fees on miscellaneous deeds:—

Tacks.—The one duplicate to be charged regulation fees, according to the length; the other *ad valorem*, as follows:—Rent under 100*l*., regulation fees; 100*l*. and not exceeding 200*l*., two guineas; 200*l*. and not exceeding 300*l*., three guineas; and for every additional 100*l*., one guinea.

"Always prepared by agent for landlord. The aggregate of these two fees, and of the stamp duties for both duplicates, to be paid equally by the landlord and tenant.

Contracts of excambion.—To be charged as dispositions, holding the value of the lands mutually excambied as the price.

"The deed to be prepared by the agent for the one party and revised by the other, as may be arranged between them. The agent who draws the contract to receive the fees payable in the case of a disposition to the purchaser's agent, and the agent who revises to receive the fees in the case of a disposition to the seller's agent; but the total expense to be equally divided between the parties.

Contracts of co-partnery.—Where the stock is defined, to be charged according to the amount of the stock as follow:—When the stock is under 500*l*., four guineas; 500*l*. and under 1,000*l*., five guineas; 1,000*l*. and under 2,000*l*., six guineas; 2,000*l*. and under 4,000*l*., seven guineas; 4,000*l*. and under 6,000*l*., eight guineas; 6,000*l*. and under 8,000*l*., nine guineas; 8,000*l*. and under 10,000*l*., ten guineas; and for every additional 1,000*l*., 10*s*. 6*d*. Where the stock is not defined, the deed to be charged at double regulation fees, according to the length."

"The deed to be prepared by the agent of any partner, as may be agreed on, and the expense divided among the partners according to their interests in the concern."

7. Charges for time occupied in professional business, and for correspondence, &c.:—

For time employed on business out of Edinburgh, but within Scotland, per day, besides travelling expenses, 3*l*. 3*s*.; for time employed in business in Edinburgh, per day, 2*l*. 2*s*.; for time employed on business in Edinburgh not exceeding an hour, 6*s*. 8*d*.; for each additional hour, after the first, 6*s*. 8*d*.

Correspondence.—For writing each letter of an ordinary length, including booking, 3*s*. 4*d*. But for letters which are necessarily longer, an additional charge to be made.

"No letters or attendances chargeable which relate to deeds for which an *ad valorem* charge is allowed, or to transactions for which a factor fee or commission is allowed. But this does

not apply to the case where the agent is also a trustee. If he has a commission as a trustee, this does not preclude the charge for attendances and correspondence as agent.

Revising deeds drawn by others.—Half of the regulation fees of drawing, according to the length.

"To be paid in every case to the agent by his own employer."

Where charges are allowed for the drawing of deeds, it is *optional* to the solicitor to charge either the *fees ad valorem*, or the fees for drawing, according to the length; but these regulations apply only to cases where there is no *particular stipulation*. It is, of course, competent to the parties to make any arrangement between themselves which they consider more equitable or convenient, according to the circumstances of each case.

As to commissions for selling and purchasing estates, and other money transactions, it has been found impracticable to lay down any general rules. A commission being a remuneration for trouble and responsibility, the rule for determining the amount is the extent of that trouble and responsibility. Thus, in the case of the sale or purchase of an estate, the bargain may be wholly settled by the parties themselves, and the solicitor has only to prepare the necessary deeds. In such a case there is no claim for commission.

S. Fees on *judicial proceedings* in the Court of Session, as regulated by Act of Sederunt :—

"First appearance in each case, for making out and producing a mandate, deducting always in the case of suspensions and advocations, 6s. 8d., being the first fee allowed in the Bill Chamber proceedings, 10s.

"Drawing memorials, 260 words in a sheet, 6s.; every other, 4s.

"All necessary copies of papers, per sheet of 260 words, 1s.

"Each necessary enrolment by either party, including attendance at the calling of the cause, not exceeding one hour, 6s. 8d.

"Each necessary attendance on business with a client, or on his account, such as attending a consultation of counsel, &c. not exceeding one hour, 6s. 8d. If the attendance has been longer, progressively higher, but in no case to exceed for a whole day 2l.

"Writing each necessary letter of an ordinary length, including booking, 3s. 4d. And when the letter necessarily exceeds the above length, to be charged progressively higher, but in no case to exceed the charge for drawing a memorial of the same length, and no letter to be charged unless it has been fully booked."

"For attending the Court according to the time occupied: if not more than four hours, two guineas; from four to six hours, three guineas; and 6s. 8d. every other hour."

THE SCENES IN THE LIVERPOOL COUNTY COURT.

No one desiring that the administration of Justice should be regarded with confidence and respect, can entertain any feeling but profound regret in reference to the scenes that have recently occurred in the County Court of Liverpool, as reported in the daily journals. The extravagance of language and conduct exhibited, as described in the published reports, afford indubitable evidence of mental infirmity existing to a degree which must excite in every well-regulated mind a feeling of compassion. That those in authority should suffer the dignity of Justice to continue to be thus caricatured is of course impossible. The legal profession and the public alike feel that Mr. Ramsay must cease to exercise the functions of a County Court Judge, and be succeeded by some person endowed with more temper and discretion.

It may be at once conceded, that all that has occurred in the County Court of Liverpool to outrage public feeling must be regarded as in the nature of an accident, which might as well have taken place in any other Court in the kingdom, Superior or Inferior.

The facts of the case, however, afford a fitting opportunity for the consideration of a matter hitherto but little discussed, namely, the character and extent of the authority which the legislature has thought fit to confer upon the Sixty Gentlemen appointed to preside in the County Courts throughout the kingdom. The Judge of the County Court of Liverpool having thought fit—perhaps with more valour than discretion—to make the editor of a Liverpool newspaper feel the strength of his supposed authority, by sending him to Lancaster gaol for a week, it may be hoped that the very sensitive class to which Mr. Whitty belongs will not *now* deem it premature to favour the public with their sentiments as to the necessity and expediency of conferring on the County Court Judges the extensive and ill-defined power of committal which undoubtedly is vested in those functionaries by the County Courts' Act. The 113th and 114th sections of the act 9 & 10 Vict. c. 95, are in these terms :—

"That if any person shall wilfully insult the judge, or any juror or any bailiff, clerk or officer of the said Court, for the time being, during his sitting or attendance in Court, or in going to or returning from the Court—or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court—it shall be law-

ful for any bailiff, or officer of the Court, with or without the assistance of any other person, by the order of the judge, to take such offender into custody and detain him until the rising of the Court, and the judge shall be empowered, if he shall think fit, by a warrant under his hand and sealed with the seal of the Court, to commit any such offender to any prison to which he has power to commit offenders under this act, for any time not exceeding seven days, or to impose upon any such offender a fine, not exceeding 5*l.*, for every such offence, and in default of payment thereof, to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid."

"That if any officer or bailiff of any Court holden under this act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of this Court, the person so offending shall be liable to a fine not exceeding 5*l.*, to be recovered by order of the Court, or before a justice of the peace, as hereinbefore provided; and it shall be lawful for the bailiff of the Court or any peace officer in any such case to take the offender into custody (with or without warrant), and bring him before such Court of justice accordingly."

It will be observed, that by the first of these sections the judge himself is the person to determine what is an "insult," and also whether it is "wilful" or involuntary. It is easy to conceive a County Court Judge—even less excitable than Mr. Ramshay—mistaking an involuntary yawn at the close of a prolix judgment as a premeditated insult, and committing the supposed delinquent to the county gaol for seven days as a fitting atonement to outraged dignity. In such a case, we venture to ask, if the person committed would have any legal redress? In the case of the Liverpool editor, who is fortunately in a position which will enable him to command that liberal measure of public sympathy rarely denied to those who are in a condition to defend themselves, is it quite certain that he is entitled to any legal redress? Uncalled for and unjustifiable as the severity exercised towards him might have been, no one supposes that the judge acted from any worse motive than a mistaken sense of duty. However erroneously he acted, it is quite manifest that the Liverpool Judge conceived he was maintaining the character of his Court, and setting the world a glorious example of judicial independence. If such be the motives which actuated him, it is clear that, unless he has exceeded the powers with which he has been invested by the statute in some particular, the law will throw its shield over the judge, and Mr.

Whitty will obtain no compensation through the instrumentality of a Court of Justice. It may be suggested, that the occasions on which the arbitrary authority with which judges are invested for the purpose of protecting them against insult in the execution of their public duty, has been so seldom abused, that the necessity for defining or limiting the power is not apparent, and no doubt, whilst the power was confined to the Judges of the Superior Courts, the force of this suggestion was generally admitted. Whilst the judges were selected from the heads of the profession, whose members were constantly before the public, and selected because they had already acquired the confidence of the profession and the public, there was a well-grounded conviction that in such hands the power of committal for supposed contempts would be cautiously, sparingly, and judiciously used. When the number of judges are multiplied, however, as they have been under the County Courts' Act, and gentlemen have been selected to fill these offices whose names and existence were previously unknown beyond the limited circle in which they moved, the question assumes a degree of constitutional importance which did not previously attach to it. Is it necessary to ensure the due administration of justice that the personal liberty of individuals should be left so much to the discretion of such a numerous body of officials as the County Court Judges? Whatever degree of popularity has hitherto been acquired by the County Courts is due mainly, if not exclusively, to the unanimity with which those tribunals have been advocated and eulogised by the newspaper press. The complaints of the legal profession and of the County Court suitors as to the manner in which justice has been administered in the County Courts, have been hitherto drowned in the loud shouts of admiration evoked by the incessant and unqualified laudations of a thousand journalists. Now that the power of the newspaper press has been defied and the personal comfort of a brother editor invaded, it is possible that the still small voice of sober sense may obtain a more impartial hearing, when the relative merits and disadvantages of the County Court system next becomes the subject of public discussion.

It is probably known to most of our readers, that the County Court Judges hold their offices by a tenure very different from that of the Judges of the Superior Courts. The latter cannot be removed, even for the

grossest misconduct, by any other authority than that of the Crown exercised upon the joint addresses of the two Houses of Parliament. The County Court Act however provides, by sect. 18 :—

“That it shall be lawful for the Lord Chancellor, or where the whole of the district is within the Duchy of Lancaster, for the Chancellor of the said Duchy, if he shall think fit, to remove *for inability or misbehaviour* any such judge already appointed or to be hereafter appointed.”

The amount of salary, the retiring allowance, and the continuance in office, of a County Court Judge, are all very much in the discretion of the executive government, a circumstance not unworthy *inter alia*, of the consideration of those who propose to extend the jurisdiction of the County Courts, so much as to transform the judges of the Superior Courts of Law and Equity into sinecurists.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

BURGESSES' AND FREEMEN'S PARLIAMENTARY FRANCHISE.

14 & 15 VICT. c. 39.

Right of voting reserved by recited provisions of 2 & 3 W. 4, c. 45, to persons then entitled not to be affected by the change of rating under 13 & 14 Vict. c. 99; s. 1.

Construction of the words “Tenement,” and “Rates for the Relief of the Poor;” ss. 2, 3.

The clauses of the act are as follow :—

An Act to exempt Burgesses and Freemen in certain Cases from the Operation of an Act for the better assessing and collecting the Poor Rates and Highway Rates in respect of Small Tenements. [24th July, 1851.]

Whereas by sect. 32 of the act of the Session of Parliament holden in the 2 & 3 W. 4, c. 45, it is provided, that every person who would have been entitled to vote in the election of a member or members to serve in any future parliament for any city or borough not included in the schedule marked (A.) to that act annexed, either as a burghess or freeman, or, in the city of London, as a freeman and liveryman, if that act had not been passed, should be entitled to vote in such election, provided such person should be duly registered according to the provisions thereafter contained; but that no person should be so registered in any year unless he should on the last day of July in that year be qualified in such manner as would entitle him then to vote if such day was the day of election, and that

act had not been passed: And whereas by sect. 33 of the said act it is provided, that any person then having a right to vote in the election for any city or borough, except as therein mentioned, in virtue of any other qualification than as a burghess or freeman or as a freeman and liveryman, or in the case of a city or town being a county of itself as a freeholder or burgage tenant as thereinbefore mentioned, should retain such right of voting so long as he should be qualified as an elector according to the usage and custom of such city or borough, or any law then in force subject as in the said act mentioned: And whereas it is expedient to amend the act of the last Session of Parliament, chapter 99, so far as it may affect the rights reserved by the said several sections of the said act of the 2 & 3 W. 4: Be it enacted, therefore, as follows :—

1. Where any person to whom a right of voting was retained or reserved by the recited provisions of the said act of the 2 & 3 W. 4, is or shall be the occupier of any such tenement as in the said act of the last Session of Parliament mentioned, and the owner of such tenement has been or shall be rated to the relief of the poor instead of the occupier thereof, and such owner shall have paid all money due on account of any rate or rates in respect of such tenement, or such occupier shall have tendered the amount thereof in the manner prescribed by such act, such occupier shall be entitled, not only to the municipal privileges and franchises reserved to him by such act, but also to all such right of voting at elections of a member or members to serve in parliament for any city or borough, and all other rights and privileges as such occupier would have been entitled to under the recited provisions of the said act of the 2 & 3 W. 4, and the other provisions of such act, and any acts amending the same, relating to the right of voting so retained or reserved, if such occupier had been himself rated in respect of such tenement, and had duly paid or tendered the rate or rates to which he was liable in consequence of such rating.

2. That the word “tenement” in the said recited act of the last Session of Parliament shall be construed to mean any house, cottage, apartment, or building, and land in the same parish held with the same or any of them, but shall not include any other land or corporeal hereditament.

3. That the words “rates for the relief of the poor” in the said recited act of last Session of Parliament shall be construed to mean rates for the relief of the poor and for other purposes chargeable thereon according to law; and that the owners of any tenements who shall be liable to be rated in respect of such tenements to any such rate by virtue of the same act shall also be liable to be rated to any rate or rates authorized to be assessed and levied by the 2nd sect. of the Act of the Session of Parliament holden in the 12 & 13 Vict. c. 65.

MEMOIR OF LORD LANGDALE, THE LATE MASTER OF THE ROLLS.

HENRY BICKERSTETH, afterwards Lord Langdale, was born at Kirby Langdale, in the County of Westmoreland, on the 18th June, 1783. His father was a surgeon and apothecary practising at that town, and to him Henry Bickersteth was apprenticed and served his full time. His talents and powers of application had favourably manifested themselves, and he was sent to a higher course of education at Caius College, Cambridge. There he proved that no mistake had been made in preparing him for a career far higher than that of a provincial medical practitioner. It was probably at first designed that he should qualify himself to take a degree as a Doctor of Medicine. His attainments, however, soon evinced his capacity for the Law. In 1808, he was Senior Wrangler and First Smith's Prizeman and became a Fellow of his College. During the time of his studies at the University, he entered as a member of the Honourable Society of the Inner Temple from whence he was called to the Bar on the 22nd Nov., 1811. He practised very successfully in the Court of Chancery, was an able Equity draftsman, and in 1827 was promoted to the rank of King's Counsel and became a Benchet of the Inner Temple. On the 17th August, 1835, he married Jane Elizabeth, the eldest daughter of the Earl of Oxford and Mortimer. Soon after this period, namely, in January, 1836, he succeeded Lord Cottenham as Master of the Rolls and was raised to the peerage. On the resignation of the Great Seal by Lord Cottenham in June, 1850, Lord Langdale was appointed one of the Lords Commissioners with the Vice-Chancellor of England and Mr. Baron Rolfe, now Lord Cranworth. It is said that the Chancellorship was offered to him, but he declined the honour, principally on account of his state of health. On the 25th March, 1861, Lord Langdale retired from the Mastership of the Rolls, too late it appears for the restoration of his health, for he died at Tunbridge Wells, on the 18th April, 1864, in his 86th year.

The judicial character of Lord Langdale stands deservedly high. He was second to none in the most scrupulous uprightness of his decisions. He was eminently patient and pains-taking. He spared no labour in acquainting himself with the facts, nor in considering the effect of the authorities

bearing on the case; or the general principles of Equity by which his judgment was to be guided. If he had not the ambition of a Mansfield or a Stowell, to enlarge or perfect the system of jurisprudence which he was appointed to administer, he has never been surpassed in impartiality, sound reasoning, acuteness in the discovery of truth, or the detection of fraud, or the justness of the conclusions at which he arrived. The appeals against his decisions during the 15 years that he presided at the Rolls were comparatively few and rarely successful.

Lord Langdale was peculiarly distinguished as a safe and careful reformer of the law. Several important and beneficial acts were passed under his advice and superintendence, and numerous orders were made for the improvement of the practice of the Court and the relief of the Suitors. He conducted the Act for the Amendment of the Law of Wills through the House of Lords, under the recommendation of the Real Property Commissioners, and was principally the author of the Act for abolishing the Six Clerks' Office, and the Act for Consolidating and Amending the Law of Attorneys and Solicitors. For the defects of the Wills' Act he was not responsible. As a measure intended to simplify the law and remove several doubts and objections, it has been generally successful; but we fear it is too true that from the carelessness of mankind and their aversion to employ professional men, the act has occasioned more intricacies than existed before. The Statute of Attorneys, which consolidated nearly sixty acts and effected many important amendments, has been a measure of unquestionable advantage both to the public and the Profession. The Six Clerks' Act, notwithstanding the costly terms on which it was effected, has been already, and will hereafter be productive of great benefit in the administration of justice in the Court of Chancery.

His Lordship, as might be expected from his strong sense of rectitude, has always protested against the various forms in which taxes have been levied on the administration of justice. He stood foremost amidst the legislators who condemned the exaction of fees from the Suitors of the Court, and whilst many eminent men joined with him in contending that the State should pay the salaries of the judges, he went further, and maintained that the Suitors should be relieved from the salaries of all the

offices of the Court, and left only to pay, their legal advisers, their counsel, and solicitors, and the expenses of their witnesses. This, indeed, would be a truly noble reform, and we yet hope it may be accomplished. Lord Langdale did all that laid in his power from time to time to reduce the amount of the burthensome fees on the Suktors, and under the sanction of Lord Lyndhurst several orders were made to reduce those exactions. During Lord Cottenham's Chancellorship some further reductions were made, and Lord T. has already taken off not less than 20,000*l.* a year. More remains behind, to which we trust the pruning-knife will be freely applied.

The general orders of May, 1845, which effected very important practical improvements, simplified the course of several proceedings, and diminished considerably the expense and delay in suits in Chancery, were prepared under Lord Langdale's directions and supervision, and adopted on his recommendation by Lord Lyndhurst.

It may be mentioned, also, that he particularly approved of the examination of articled clerks prior to their admission on the Roll of Solicitors; the orders establishing the examination in his Court were made soon after his appointment as Master of the Rolls, and we know that he always took great interest in the conduct of the examination and its successful progress.

In noticing the cases on the Taxation of Costs, which for the most part come before the Rolls Court, we have frequently quoted the language of Lord Langdale, who whilst he exercised his accustomed strictness in cases of professional misconduct, always did justice to the respectable practitioner. He frequently observed that, taken as a body, the solicitors were entitled to the highest commendation for their skill and integrity;—that considering the numerous opportunities they had to misapply the funds entrusted to them, and especially the power they had to conceal such misconduct, the instances in which they yielded to the temptation were singularly few in number.

Amongst other important propositions for facilitating the administration of justice was, that of the removal of the Superior Courts from their present inconvenient position and their better construction in the centre of the metropolis. Lord Langdale much promoted this measure, and attended before the Select Committee to give his evidence in its support.

Of the measures of improvement which have taken place in modern times, (amongst many abortive attempts and flagrant blunders,) it may be admitted that the Commission of Inquiry and afterwards the act establishing the Depository of Public Records has been one of the most unexceptionable. The ancient as well as modern Records affecting both the interests of the state and the rights of property, comprising charters and documents relating to corporate and individual titles, and the proceedings, decrees, and judgments of our Courts of Justice, were scattered in various inconvenient parts of London, insecure from fire or other injury, ill-arranged and many without any arrangement. These invaluable stores so important for legal as well as antiquarian research, are under a course of excellent classification and arrangement, and the Master of the Rolls for the time being is the Record Keeper.

We entirely agree with Mr. Foss in his work on "The Judges of England," that "no man was so peculiarly fitted as Lord Langdale for the great undertaking which has made such advances during the period of his official career. His knowledge of the subject and appreciation of its importance, his discriminating judgment and patient perseverance, his inflexible conscientiousness and systematic habits, were the precise qualities that were required to subdue the confusion which had gradually crept among our public records. By the application of these, and by the judicious selection of able instruments, he has subjected the chaotic mass to an arrangement which even now in its unfinished state, affords facilities to the statesman, the historian, and the biographer, which they never before enjoyed; and which, when completed, will place our country's muniments in the very highest rank of national collections."

MR. WARREN'S APOLOGUE OF THE CRYSTAL PALACE.

"THE LILY AND THE BEK."

MR. WARREN has high authority for occasionally devoting a few days of the Vacation to the exercise of his powers of imagination; and in the Apologue before us he has inculcated some of the highest and most important truths, both moral and religious. Lord Erskine's Armata is an instance of the application of a legal mind to the illustration of great principles

through the medium of fiction. Lord Abinger also was the author of a tale designed to convey a political, if not a moral, lesson; and "though last not least," Sir T. N. Talfourd stands conspicuous in poetic literature as in forensic eloquence. We rejoice that Mr. Warren has become, as it were, an exhibitor, not *in*, but of, the Crystal Palace itself; and thus has appropriately enabled us to record the most remarkable event of the time in the social gathering of all nations to witness the results of art, science, and industry, collected under one mighty roof, from all quarters of the globe.

We might indeed, without the aid of "The Lily and the Bee," have been justified in giving a passing notice of some of the objects contained in this vast emporium. We might call to the mind of the legal visitor the colossal statues of Eldon, Stowell, and Follett—each representing a grand division of our country's laws. Some examples, also, we might have pointed out within those ample aisles of Hindoo and other Temples of Justice, and have directed attention to a memorial of our ancient Magna Charta. Nay more, we might have claimed as "germain to our purpose" that wonderful stone, taken from the primeval class of rocks, proved by a marvellous chain of *circumstantial evidence* to have formed, millions of ages ago, part of the sea shore on which was impressed the footsteps of a quadruped whose progress is traced with conclusive certainty.¹

Besides, however, these claims in behalf of the science of jurisprudence to hold a fitting place in the Great Exhibition, we are now indebted to the genius of Mr. Warren; who, in the work before us, has concentrated and condensed in a series of glowing pictures the vast results of this matchless museum; and, as a distinguished lawyer, the author is entitled to a high place on our pages.

We are not, however, permitted to review this work of her Majesty's learned counsel after the manner of a volume of law, but must confine ourselves within narrow limits: yet, for the sake of those who may be curious to know the scope of this remarkable Apologue, we may briefly state that it is divided into two books:—the first comprising "*Day in the Crystal Palace*;" the

second "*Night and Morn in the Crystal Palace*."

An imaginary "Voice" calls the poet to "behold and ponder" on the wonders there collected. After a rapid glance at the great congregation of mankind on the plains of Shinar, and the idolatrous gathering of Nebuchadnezzar on the plains of Dura,—the Poet-Philosopher loyally follows the Queen, with her Consort and the Prince of Wales,—"*The Royal Three*,"—in their contemplation of the products of our own vast empire "on which the Sun never sets;" then of all the countries of the earth, nation by nation, calling to mind the characteristics of each—their great deeds, their vicissitudes—their poets and philosophers—their career in arms, arts, and science. And from the splendid roll of "*Sixty Centuries*" are summoned before us all the pre-eminent names enregistered on the past and present ages.

With lofty eloquence the merits of these heroes are recorded, and a sublime view is taken of the wonders of creation, unfolded by the profound researches and inventive genius of man, as exhibited in the vast arena daily traversed by so many thousand spectators. Then come brief, but graphic, descriptions of the extensive range of productions comprised within this Exhibition of the Industry of the Globe. The characteristics of the various classes of visitors, now numbering six millions! are happily distinguished through all their shades of intelligence, from the lowest grade of ignorance to the highest degree of knowledge.

Neither the nature of our journal, nor its limits, enable us to give adequate examples of the poetic talent and philosophic spirit with which Mr. Warren has treated and adorned his theme. The "*Diamond's Levee*," the "*Philosophers' Stone*," and the "*Speaking Statuary*," are among those parts of the work which will particularly attract the reader's attention. So will all the passages descriptive of "*the Bee*,"—an apt emblem of "*the Industry of all Nations*." The many beautiful lines on "*the Lily*" will also find a large class of admiring readers.

Here we must close with a statement of the principal topics on which the author has descanted. Those of the 1st Book of the Apologue are the following:—

"Three gatherings. The voice of one unseen. *Day in the Crystal Palace*. Sixty centuries. The Royal Three. The sacred gem. The Queen's transit. The Queen contemplating her empire. A pleading statue. Specta-

¹ Mr. Warren, in his poem and in one of his notes, has, by first calling popular attention to this matter, rendered due homage to Professor Owen on this great geological specimen, a contribution from Canada.

tors. A bewildered poet. Musing philosophers—English, French, German. Atoms and stars. Man and his doings. Man and his Maker. Shakspeare and David. The diamond's levee. The philosopher's stone. Ancient monsters. The earth and its Maker. A musing on mutability. A bevie of ladies bright. The lovelie ladye and splendid worm. Confused splendour. Speaking statuary. A vision of Newton. *The bee.*

The subjects of the 2nd Book are—

"*Night in the Crystal Palace.* Seventy thousand gone. Nature asleep. A sound. Re-appearances. O ye dead. The royal ghosts—Alexander, Charlemagne, Alfred, Napoleon. Alfred's hymn. Ghosts of philosophers—Aristotle, Roger Bacon, Lord Bacon. A monarch in his palace. His levee. A slaughtered sage. Children and old ghosts. Galileo's glory and shame. Sorely amazed ghosts. Newton among pagan and Christian ghosts. A darkened ghost. An awful vision. The triple crown. Plato and Butler—their converse. The warrior-poet and Prometheus. Gold in the mist. Flight into the past. Vision of an idol and a tower. The first murderer. Adam and eve. The father and his sons. The lovely mother and her lovely daughters. A son before his first parents. A glimpse through six thousand years. The moving shadow. Spirits of them that sleep. Gems seen, and one unseen. The awful voice. Light lost. A horror. Returning light. A scoffer and the book. Departing shadows.

Morn in the palace. A sparrow. A poor soul calling on mankind. Flowers asleep. *The lily.* Her message. A son and a father."

The Volume also contains several interesting, and some profoundly instructive, notes under the titles of—

"Napoleon and Leibnitz on Egypt. The modern Pharaoh in the Red Sea. Scipio's tears. The Esquimaux question. Prince Albert on the mission and destiny of England. The new Mediterranean. The philosopher's stone. Ancient monsters. The bee mystery. The bee and the infinitesimal calculus. Galileo among the cardinals. Aristotle on Anaxagoras. The angel and Adam's astronomical discourse. The infidel philosopher. An extinguished constellation. Golden truth in the midst of mythology."

COURSE OF STUDY AT GRAY'S INN.

1. *The Society's Lecturer* delivers annually about 60 lectures on law. They are prepared in writing, and delivered on two days in each week in the public hall of the Society.

No fee is demanded for admission to the lectures. They are free to all students, members of any of the Inns of Court.

The lecture ordinarily occupies an hour and a quarter, and during the winter season there is an average attendance of 40 students, who

evince a painstaking attention to the matters brought before them.

2. Once in each fortnight there is a *public discussion*, or "*mooting*," by students in the hall, upon a case prepared and stated previously by the lecturer. At the conclusion of the arguments the lecturer delivers his opinion upon them.

This system of "*mooting*" has been found to work exceedingly well, and the students are generally anxious for opportunities to take part in the discussions.

3. *Fortnightly examinations* on the subjects of the lectures were also instituted and continued for some time. But it was found that the students could not regularly submit themselves to the examinations, and at the same time give constant attendance upon the lectures and "*mooting*."

4. An *annual examination* is held in Trinity Term, to which all students of sufficient standing are admitted. The examination is partly by written questions, and partly oral. It lasts two whole days.

5. *Certificates of honour* are given at these examinations to those candidates who pass worthily; the certificates are under the seal of the Society, and are signed by the treasurer, three other benchers (who undertake the office of examiners), and the lecturer.

6. The lecturer gives, by way of encouragement, a *prize*, consisting of a valuable set of reports, to the candidate who occupies the first place in the class list.

These examinations have been eminently successful. The gentlemen who have submitted to them have been generally persons of talent and attainments; and the papers given in by the candidates have frequently exhibited a high order of merit. They have been attended as well by students who have previously graduated at one of the universities as by those who have not had that advantage.

The benchers have uniformly exhibited a sincere anxiety for the success of these measures, adopted under their sanction, and have on every occasion encouraged by their co-operation and presence both the lecturer and the students.

NOTE OF THE WEEK.

THE NEW VICE-CHANCELLOR.

CONSEQUENT upon the promotion of Two of the Vice-Chancellors to the higher office of Lords Justices of Appeal, two new Vice-Chancellors are to be appointed. We have just heard that *James Parker, Esq., Q. C.*, has been nominated to one of the vacancies. Mr. Parker was called to the Bar 6th Feb. 1829, and made Queen's Counsel in July, 1844.

ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1851.

Queen's Bench.

[Continued from page 441, ante.]

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Chisholme, John, 29, Edward-st., Hampstead-rd.	John Charles Hall, Lincoln's-inn-fields
Clark, John, 39, Lorn-rd., Brixton; 1, Anchor-terr., Southwark	Wm. Dudley, Southwark
Clunn, Alfred John, 1, Little Piazza, Covent-garden	Charles Richardson, Golden-square
Coleman, John Sherard, Westbourne Park-rd.; Monmouth-rd., Baywater; Keppel-st.	Charles Richardson, Golden-square
Coleman, Wm. Rose, Gosport, Hants; and 72, Chiswell-st., Finsbury	Robt. Cruickshank, Gosport
Collins, Samuel Humphrey, Mornington-rd.; Bay-ham-terr., Camden-tn.; Ilminster	John Baker, jun., Ilminster
Cooper, Rd. Kelsall, 8, Soley-ter., Pentonville; Tetlow Bank, Cheetham-hill	Chas. Cooper, Manchester
Cornish, Thos., Penzance	Hen. Cornish, Tavistock; Thos. Darke, Penzance
Crowwell, Edward Benjamin, 8, Northampton-pl., Canonbury-sq.; Ravenstone; and Leicester	Wm. Freer, Leicester
Cridland, Joseph John, 22, James-st., Bucking-ham-gate	Stafford Moore Cooper, Old Cavendish-st.
Croome, John James, 19, Wharton-street, Penton-ville; Bristol; Camden-town	Chas. Stewart Clarke, Bristol
Crossman, Geo. Danvers, 28, Everett-st.; Alves-ton; Great Russell-st., Bloomsbury	Thos. Crossman, Thornbury
Dench, Hen., Isle of Ely, Cambridgeshire	Luke Dench, Ely
Derry, Wm. Smith, 6, Windsor-terr., Vauxhall-rd.; Launceston; Pakenham-st., Pentonville	Chas. Smale, Bideford
Deabrow, Geo., jun., 12, Caroline-st., Bedford-row	Wm. Harry Surman, New-sq., Lincoln's-inn
Dingley, John, 91, Stanhope-st., Hampstead-rd.; and Launceston	Saml. Rowles Pattison, Launceston
Dodds, Joseph, 5, Marlborough-terr.; and Stockton Downey, Marcus, 44, White-hart-pl., Kennington; and Rochdale	Wm. Bayley, Stockton; Hen. Barnes, Stockton
Dryland, Wm., 16, Soley-ter., Pentonville; Speen-hamland	Thos. Ferrand Dearden, Rochdale; J. Molesworth, ditto.
Duckitt, Jas., Bradford	H. Godwin, Newbury; T. E. Parson, Lincoln's-inn-fields
Eaden, Wm. Wright, 12, Cheyne-walk, Chelsea; Cambridge	Rd. Ridehalgh, Bradford
Edwards, Fra. John, 29, Wakefield-st., Brunswick-sq.; Broadward	John Eaden the Younger, Cambridge
Evans, Edwd., S. Alpha-pl.; and 7, King's Bch.-wk.	Thos. Wm. Davies, Leominster
Faithfull, Rt., 13, Fludyer-st., Whitehall; Brighton	Frs. Boydell, Chester
Feuillade, Fra., Charles-st., St. James-sq.; North End, Fulham	Hen. Faithfull, Brighton
Fielding, Allen, 33, Store-st., Bedford-sq.; Canter-bury	Chas. Bischoff, Coleman-st.
Fisher, Edw., 16, Compton-st., East; Newark-upon-Trent	Hen. C. Kingsford, Canterbury
Fowler, Benj. John Boyes, Charles-st.; Eastleach Turville; Hunter-st.; Baker-st.	Godfrey Tallents, Newark-upon-Trent.
Fraser, Jas., 6, North-ter., Camberwell	J. Fowler, Eastleach Turville; G. L. P. Eyre, John-st.
Freeman, Fred. Wm., Cambridge-st., Rotherfield-st., Islington; Wimborne Minster	Rd. Dawes, Angel-ct.
Gibson, Thos. Geo., Newcastle-upon-Tyne; 24, Nottingham-pl.	Isaac Fryer, Wimborne Minster
Gill, Isahm Hen. Edw., 41, Bedford-row; Cra-ven-pl., Westbourne-ter.; Westbourne-grove	Geo. T. Gibson, Newcastle-upon-Tyne
Gill, Thos. Chas., 32, Upper North-pl., Gray's inn-road; Plymouth; Gt. James-st.	Amrose Lace, Liverpool
Graham, Fred. Valpy, 3, Mitre-ct. Chambers; 1, South-ter., Brompton	John Browne, 10, King's Arms-yard
Green, Hen. Geo., Woodley near Romsey, Hants; Chichester; 268, Strand	Rt. Fuller Graham, Newbury
Haines, John, Willesden-green	Wm. C. Rhoades, Chichester
Harris, John Hen., Clapham-common	Sam. Haines, Gt. Marlborough-st.
Hartley, Jas., Rochdale	W. G. Pennington, Serjeant's-inn; G. H. Williams, Margaret-st.
Hemp, Jas., 4, Grosvenor-villas, Brixton	Rd. Hunt, Rochdale
	John Clark, Sessions House, Old Bailey

- Heads on, Chas., Reading
 Hiatt, Chas. Wall, Birmingham; Wellington .
 Walworth-rd.
 Higham, Geo. Wm., 9, Park-pl., Highbury-vale,
 Islington; Brighthelm
 Hodding, Hen. Sweet, 84, Gloster-pl., Portman-st.
 Holden, Lawrence, 12, Belgrave-st.; Lancaster;
 Soley-ter.; Manchester-st.
 Hopkins, David, 8, Welbeck-st., Cavendish-sq.
 Howlett, Bartholomew, 21, Gt. Percy-st.; Kirton
 in Lindsey; Gloucester-st., Queen's-sq.
 Hutchins, Fred. Leigh, 25, Hanover-sq.
 James, John Hen., 36, Curzon-st.; Mount-st.
 James, Edw., 13, Trafalgar-pl., Shacklewell
 Jeffery, Geo., 57, Swinton-st.; Holford-sq.
 Jeffery, Geo. Abbott, 8, Knightsbridge-ter.
 Jennings, Hen., Great Ormond-st.; Leeds; Stan-
 hope-st.; Margaret-st.; Devonshire-st.
 Johns, Bradford, 44, Middleton-sq., Pentonville;
 Swansea; Dover-rd.
 Johns, Fred. John Bull, 22, Holford-sq.; Fal-
 mouth; St. Austel; Barnabury-rd.
 Jones, Alfred Alex., 13, Paragon, New Kent-rd.
 Jones, Evan Miller, 110, St. John-st.-rd.; Bury
 St. Edmund's
 Jones, Hen., Neath
 Jones, Wm., 110, Sloane-st., Chelsea
 Justice, Albert Wm., 13, South-sq., Gray's-inn;
 Bernard-st., Russell-sq.
 Kent, Benj., Newcastle-upon-Tyne
 Kent, Edmund, jun., Sydenham and Fakenham
 Kershaw, Fred., Shaw, near Oldham, Lancaster
 Kirk, John, jun., 18, St. Thomas's-sq., Hackney;
 Chatham-pl., East; Mid Lavant
 Kitchener, Wm. Orbell, Newmarket
 Knacker, Edw. Newman, 23, Red Lion-sq.;
 Dover; Soley-ter., Pentonville
 Layton, Thos. Edw., South-ter., Camberwell, Surrey
 Little, Geo. Hutchinson, 2, Mornington-crescent .
 Mace, Wm. Glover, 40, Stanhope-street, Hamp-
 stead-rd.; Tenterden; Ely-pl.
 Malden, Alex. Lloyd, 2, Henrietta-st., Brunswick-
 sq.; Worcester
 Matthews, Thos., Headingley
 Maxwell, John, 8, Alfred-st., Bedford-sq.; Bide-
 ford; Barnstable
 Mee, Thos., Billericay
 Mellersh, Robt. Edmund, 11, Wakefield-st., Re-
 gent-sq.; Godalming
 Metcalfe, Fred. Morehouse, 1, Upper Bedford-pl.,
 Russell-sq.
 Metcalfe, J. Bellamy, 13, Ordnance-road, St.
 John's wood
 Michelmores, C. Fred., Barnes; Totness
 Moore, W. Walker Kelland, 44, Tooley-st., Bo-
 rough; Exeter
 Morris, Fras. Burdett, 1, Alliance-cottages, Cam-
 berwell; 4, Warwick-sq., Kensington
 Morris, Thos. Fred., 5, Upper Porchester-st.;
 Northleach. Woodstock
 Morris, Chas. Musgrave, 36, Sidmouth-st.; Leeds;
 Halifax
 Ostell, John, Albion-grove, West, Barnabury-park;
 Carlisle
 Page, Wm. Sutton, 42, Baker-st., Lloyd-sq.; Stroud
 Paine, Jas., Putney; Oxford-ter.; Great Chart;
 Bouverie-st.
 Paley, John Hewitt, 37, Wakefield-st., Regent's-
 sq.; Peterborough
 Gantham Rd. Dodd the Elder, New Broad-st.
 John Owens, Newtown; Geo. Marcy, Wellington
 Geo. Higham, Brighthelm
 Matthias Thos. Hodding, Salisbury
 J. H. Sherson, Lancaster; H. P. Sharp, Verulam-
 buildings
 R. W. Beor, Swansea; J. White, Welbeck-st., Ca-
 vendish-sq.
 Joseph Hawlett, Kirton in Lindsey
 Wm. Thos. Longbourne, South-sq., Gray's-inn
 Chas. Reynolds Williams, Lincoln's-inn-fields
 John Layton, Ely-pl.
 Herbert Mends Gibson, Plymouth
 Richard Kirkman Lane, Argyle-st.
 Robt. Barr, Leeds
 J. H. Todd, Winchester; E. Lyne, Liskeard; W.
 H. Brown, Swansea
 Wm. Stilson, St. Austel
 John Alex. Jones, Quality-ct.
 John Greene, Bury St. Edmund's
 Hen. Simmons Coke, Neath
 Joseph Turnley, 16, Cornhill
 T. F. Justice, Berners-st.; S. Thorn, Ditto; W.
 Justice, Ditto
 N. Kent, Newcastle-upon-Tyne
 E. Kent, sen., Fakenham
 John Milne, Shaw, near Oldham, Lancaster
 Thomas Greene, Chichester
 Wm. Cripps Kitchener, Newmarket
 E. Knocker, Dover
 Timothy Tyrrell, Guildhall, London
 D. Gray, Lincoln's-inn-fields; C. Clarke, Ditto; J.
 Woodcock, Ditto
 Joseph Munn, Tenterden
 Thos. Berneby, Worcester
 John Sangster, Leeds
 R. Brombridge, Barnstable; J. C. Hall, Lincoln's-
 inn-fields
 George Shaw, Billericay
 Thos. Mellersh, Godalming
 Chas. Metcalfe, jun., Wisbeach
 Barry Parr Squance, Coleman-st.; Thos. Tilson,
 Ditto
 C. Michelmores, Totness; G. Preswell, Ditto; H.
 D. Poole, 79, Blackfriars-rd.
 Hen. Wilcocks Hooper, Exeter
 Chas. Condell, Copthall-ct.
 Hen. Styles, Northleach
 Abraham Horsfall, Leeds
 Simon Ewart, Carlisle; Silas Saul, Carlisle
 Wm. Thos. Paris, late of Stroud; Edwin Witchell,
 Stroud
 Edw. Watts, Hythe, Kent
 Messrs. Gates and Co., Peterborough

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Warde v. Warde. Feb. 10, Aug. 5, 1851.

HUSBAND AND WIFE.—PRODUCTION OF DOCUMENTS BY SOLICITOR ACTING FOR BOTH, IN RELEASE OF WIFE'S JOINTURE.

Held, upon appeal from, and reversing the decision of Vice-Chancellor Lord Cranworth, that the plaintiff in a bill to enforce a contract by the defendant to charge his other property with her jointure, upon her releasing therefrom an estate which he was desirous of selling, was entitled to the production of documents and letters in relation thereto, which were in possession of the solicitor, who had alone acted in the matter of such release, notwithstanding the defendant alleged that he had acted for himself alone, and claimed them as privileged communications.

THIS was an appeal from Vice-Chancellor Lord Cranworth, refusing the production of certain documents and letters in the possession of Mr. Berry, (reported 41 L. O. 78). It appeared that upon the defendant, Mr. Warde, being desirous in 1844 to dispose of an estate in Warwickshire, which was charged with his wife's (the plaintiff) jointure, under her marriage settlement, dated in 1834,—she consented to join with the trustees to release the same, upon the understanding, as she alleged, of the estate he was about to purchase with the money at Luton being charged therewith. Differences having subsequently arisen, the defendant refused to secure the jointure on other property, denying the contract, and the plaintiff thereupon filed this bill. It also appeared that Mr. Berry, who was made a defendant, had acted in the matter of releasing the estate from the jointure, as was alleged, on the part of the husband alone, but no other attorney acted for the plaintiff. The production was resisted on the ground that the documents and letters were privileged communications.

Stuart and Dickenson, in support of the appeal; *Roll and Erskine*, contra; *Messiter* for the trustees of the marriage settlement.

Cur. ad. vult.

The Lord Chancellor said, that the defendant Berry must be taken to have acted as joint attorney for the husband and wife, and that the plaintiff was therefore entitled to a production, and the appeal was allowed accordingly.

Rolls' Court.

Armstrong v. Storer. July 14, Aug. 7, 1851.

ADMINISTRATION SUIT.—WAIVER BY MORTGAGEE OF HIS PRIORITY OF COSTS.

A mortgagee of property, belonging to a testator in due course of administration in a suit to which he was defendant, and in

which a decree had been made, filed a supplemental bill to carry out the decree under which the mortgaged property was sold: Held, that he had thereby waived his priority as to costs, and that the costs of the suit must be first paid in the usual way, and afterwards the defendant's principal, interest, and costs.

THIS was an administration suit, and the defendant, Mr. Bamalgette, who had a mortgage on part of the testator's estate, came in under the decree made therein and filed a supplemental bill to prosecute the same. The property mortgaged had been sold in the suit, and the question now arose whether he was entitled to his costs in priority to the costs of the suit.

Roupell, Q. C., Lloyd, Q. C., Elmley, Shadwell, and Follett for the respective parties.

Cur. ad. vult.

The Master of the Rolls said, that as the defendant had come in to take the benefit of the suit, he had waived his priority to the costs, and was only entitled to be paid his principal, interest, and costs in the usual manner after payment of the costs of the administration suit.

Vice-Chancellor Knight Bruce.

In re Tring, Reading, and Basingstoke Railway Company, ex parte Hill and another. Aug. 4, 1851.

WINDING-UP ACTS.—LEAVE TO SOLICITORS TO GO BEFORE MASTER, NOTWITHSTANDING ADJUDICATION IN BANKRUPTCY BY COMMISSIONER.

Order made for leave to solicitors to go before the Master to make such proof as they could establish of their debt for business transacted for the company, notwithstanding the adjudication by the Commissioner in the matter of the bankruptcy of the company, whereby he had rejected the proof tendered to him, and the order was directed to be drawn up in the matter of the bankruptcy and of the Winding-up Acts,—the costs of the official manager to come out of the estate.

THIS was an application to reverse the decision of the Master, to whom the matter of the winding up of the above company had been referred, disallowing the claim of Messrs. Hill and Everill, who were the joint solicitors to the undertaking, and that they might be at liberty to prove their debt before the Master. It appeared that the Commissioner, upon the adjudication in bankruptcy of the company, had rejected the proof of their claim which had been tendered.

Selwyn in support; *Roeburyk* for the official manager, contra, on the ground that the proceedings in bankruptcy were conclusive, referring

to the 11 & 12 Vict. c. 45, s. 7, which enacts, that "all proceedings had, accounts taken, and other matters done in the prosecution of any fiat, before any order absolute under this act, shall, for the purposes of any winding up under this act, be as valid and conclusive as the same would have been valid and conclusive under the said fiat, and any pending proceedings, accounts, and matters under any such fiat, may be proceeded with and concluded under this act."

The Vice-Chancellor made an order, to be drawn up in the matter of the bankruptcy and of the Winding-up Acts, giving the appellants leave to go in before the Master, and directed the costs of the official manager to be paid out of the estate.

Vice-Chancellor Lord Cranworth.

In re London and Birmingham Extension, and Northampton and Warwick Railway Company, Blyth v. Carpenter. Aug. 5, 1851.

WINDING-UP ACT.—PROOF BY OFFICIAL MANAGER BEFORE MASTER IN ADMINISTRATION SUIT, OF CLAIM.

The Court gave leave to the official manager under the winding up of a railway company to proceed before the Master, to whom the matter of an administration stood referred, to establish a claim against the estate of the testator,—the matter of the winding up being referred to a different Master, and the report in the administration suit being ready for signature, and directed the signing of the report to be delayed,—on the ground that the estate would become distributable on the report, and the claim be of no effect.

It appeared that the matter of the winding up of this company had been referred to Master Blunt, and that there was a claim against the estate of a Richard Carpenter for 3,895*l.* odd, and that the suit for the administration of his estate had been referred to Master Richards, whose report was ready for signature. Under these circumstances a motion was now made on behalf of the official manager of the company, for leave to go before Master Richards to establish his claim on behalf of the company, and that the master might delay signing the report.

Swift, in support, on the ground that if the funds were distributed upon the report, the claim could not be enforced, referring to *Paynter v. Honiton*, 3 Mer. 297.

The Vice-Chancellor made the order as asked.

Vice-Chancellor Turner.

Newman v. Clifton. Aug. 4, 1851.

TURNER'S ACT.—SPECIAL CASE.—POWER OF ADVANCEMENT.—"EMPLOYMENT."

A legacy was given to trustees in trust for the testator's grandson to vest on his attaining 25, with power to them to advance a cer-

tain sum, notwithstanding the legatee should be under 25, for placing him out to any profession or "employment." The trustees having advanced the sum for the purpose of setting him up in the business of a farmer: Held, on special case under the 13 & 14 Vict. c. 35, that the advance was properly made.

By his will, a testator, Mr. Webb, bequeathed a sum of 2,000*l.* to trustees upon trust for his grandson, Samuel Webb Newman, to vest upon his attaining the age of 25, and empowered the trustees to raise and pay out of the fund, notwithstanding the grandson should be under 25, any sum not exceeding 1,000*l.* for placing him out to any profession or employment, or for the purchase of a commission in the army, or for his education at the University or Inns of Court, or for his preferment and advancement in any profession or employment. After the testator's death, the trustees advanced 1,000*l.* to set up the legatee in the business of a farmer, insuring his life for 1,000*l.* Upon the death of the grandson under 25, a question arose whether the trustees had properly made the advance of 1,000*l.* The matter came on in the form of a special case under the 13 & 14 Vict. c. 35.

Bethell and H. Stevens for the plaintiff, the widow of the legatee.

J. Bailey and Lewis for the trustees.

The Vice-Chancellor held, that the trustees were justified in making the advance to establish the legatee in the business of a farmer, as included by the will in the term "employment," and that the plaintiff was therefore entitled to the fund which had been received from the insurance office, after deducting the sums which had been advanced to the deceased and were not authorised by the will, together with their costs.

Court of Queen's Bench.

Chelsea Waterworks' Company v. Bowley. June 6, 13, 1851.

LAND TAX ASSESSMENT ACT.—LIABILITY OF WATERWORKS' COMPANY TO BE ASSESSED FOR PIPES.—OCCUPATION OF LAND.—43 ELIZ. C. 2.

Held, on special case for the opinion of the Court, that the Chelsea Waterworks' Company was not liable to be assessed to the land tax in respect of certain pipes, which they had laid down in the parish of St. John's and St. Margaret's, Westminster, under the 38 Geo. 3, c. 5, s. 4, their reservoir and works being in the parish of St. George's, Hanover Square—the right of laying down such pipes being in the nature of an easement and not of an occupation of land or an hereditament.

Held also, that the word "land" in the 43 Eliz. c. 2, has a different signification to what it has in the 38 Geo. 3, c. 5.

THIS was a special case for opinion the

Court, upon the question whether the plaintiffs were liable to be rated to the land tax, in respect of certain pipes which they had laid down under the authority of the 8 Geo. 1, c. 26, ss. 8, 9, under certain highways in the parishes of St. John's and St. Margaret's, Westminster, their reservoirs and works being in the parish of St. George's, Hanover Square.

By sect. 4 of the 38 Geo. 3, c. 5, (the Land Tax Assessment Act), it is enacted, that "all and every person and persons, bodies politic and corporate, &c. having or holding any such manors, messuages, lands, tenements or hereditaments, or other the premises, in respect thereof, shall be charged with as much equality and indifference as is possible, by a pound rate, for or towards the said several and respective sums by this act set or imposed, or intended to be set and imposed," &c.

An action had been brought by the company against the defendant, as representing the Land Tax Commissioners, for seizing certain goods belonging to them as a distress for the land tax, to which the defendant pleaded the general issue by statute, but it had subsequently been turned into a special case.

Crowder, Q. C., and Butt, for the plaintiffs, admitted the company were rateable to the poor, under the 48 Eliz. c. 2, but contended that they were not liable under the Land Tax Assessment Act.

Willes, for the defendant.

Cur. ad. vult.

The Court, after referring to the 38 Geo. 3, c. 5, s. 4, said, that the right which the plaintiffs enjoyed of conveying water through the land of another, was rather in the nature of an easement than the occupation of land or of an hereditament within the meaning of the act, so as to render them liable to be assessed, and that the word "land" in the 43 Eliz. c. 2, had a different meaning to what it had in the 38 Geo. 3, c. 5, and that the plaintiffs were therefore entitled to judgment.

Court of Bankruptcy.

(*Coram* Mr. Commissioner Goulburn.)

Anon. Sept. 17, 1851.

ENLARGING TIME FOR ARRANGEMENT.

Held, that the time for which trader debtor's summonses are issued for the purpose of making an arrangement will not in future be enlarged.

THIS was an application to enlarge the time under a trader debtor's summonses for the purpose of effecting an arrangement.

The 83rd section of the 12 & 13 Vict. c. 106, enacts that "it shall be lawful for the Court, upon reasonable cause shown, to enlarge the time for calling upon such trader to state whether or not he admits such demand, or any part thereof, and for entering into such bond, or for any or either of such matters, for such time as the Court shall think fit."

The Commissioner said, these applications, which were frequent, would in future be refused, as by granting time an opportunity was afforded for a collusion to enable one creditor to obtain an undue preference over the others. The summonses issued for the purpose of proceeding in bankruptcy for the benefit of all the creditors, and it could not be allowed to operate as compelling a debtor to make terms. A similar rule had also been laid down by some of the other Commissioners.

Insolvent Debtors' Court.

(*Coram* Chief Commissioner Reynolds, and Commissioners Law and Phillips.)

In re Swan. Sept. 24, 1851.

INSOLVENT.—WARRANT FOR IMPRISONMENT.—RIGHTS OF DETAINING CREDITORS.

An insolvent was ordered to be imprisoned for two years from the date of the vesting order at the suit of the general body of creditors, and for 12 months at the suit of Messrs. A. and N. with whom he had contracted a debt without any reasonable expectation of payment. At the time judgment was pronounced, which was more than a year from the vesting order, A. and N. were the only detaining creditors, and were so stated in the warrant of the gaoler: Held, that A. and N. had not lost their right with the general body of creditors to detain their debtor by reason of their having also an individual case against the debtor, and an application on behalf of the insolvent for his discharge was dismissed.

THIS was an application on behalf of Hugh Swan, an insolvent, to be discharged. It appeared that he was a linendraper and had been adjudged to remain in custody for two years from the 25th March, 1850, the date of his vesting order, at the suit of the general body of creditors, and for 12 months from the same date at the suit of Messrs. Abbott and Nottingham, with whom he had contracted a debt without any reasonable or probable expectations of payment. The judgment was pronounced after the expiration of 12 months from the vesting order, and the detaining creditors were Messrs. Abbott and Nottingham, at whose suit the gaoler's warrant specified the detainer to be.

Cooke opposed the application.

The Court held, that the two detaining creditors were of the general body, and had a right of detention after the judgment at their individual suit had expired, and that they were not to be put in a worse position than the other creditors, because they had an individual case against the debtor, and that the warrant was therefore good, and the application was refused.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

CONSTRUCTION OF WILLS.

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lexacy, p. 147.

Courts of Equity :

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, pp. 204, 246, 265.

Law relating to Trustees, p. 285.

Evidence, pp. 306, 326.

Jurisdiction in Suits for Discovery, p. 347.

Law of Property and Conveyancing, pp. 366, 395.

Law of Wills, pp. 406, 426, 444.]

ADMINISTRATION OF ASSETS.

Exoneration of mortgaged devised estates.—

A testator devised an estate (which he had mortgaged), freed and discharged from all his debts, and all his annuities, legacies, and bequests. He afterwards devised and bequeathed other property, with similar words of exemption, and then devised and bequeathed certain specified property, upon trust to pay, in the first place, the mortgage debt on the estate first devised; and, in the next place, all the testator's other debts, funeral and testamentary expenses, debts, annuities, and legacies. In another passage, the testator expressed his intention to be, that the estate in mortgage should be held free from all charges created by him. And he bequeathed all his residuary personal estate freed and discharged from all his debts and liabilities, and the legacies thereby bequeathed. On the specified fund proving insufficient to pay the mortgage debt, *held*, that the devisees of the mortgaged estate were entitled to have it exonerated out of the residuary personality. *Lord Brooke v. Earl of Warwick*, 2 De G. & S. 425r.

See *Assets*; *Mortgages*.

ANNUITIES.

1. *Exclusive charge on real estate*.—A testator gave several life annuities, one of which was, (expressed in the alternative,) either 10*l.* a-year, or 5*l.* and a tenement, (part of the *N.* estate,) and he charged them all on the *N.* estate: *Held*, that all the annuities were charged exclusively on that estate. *Lomas v. Lomas*, 12 Beav. 285.

2. *Sterling or currency*.—A testator, domiciled in Jamaica, gave to his son "one clear annuity of 100*l.* per annum, for and during his natural life, and, should he die, a child

him surviving, I continue the same annuity for such child's use and benefit, to be paid to his or her mother." The testator then gave two annuities of 100*l.* sterling to two other persons, and bequeathed his residuary estate to his executors, in trust, amongst other things, to pay the several legacies and annuities before given by him.

Held, that the annuities given to the son and his child were to be paid in Jamaica currency and not in sterling; and that the child's annuity was a perpetual one. *Yates v. Maddam*, 16 Sim. 613.

See *Nephew*.

APPOINTMENT.

1. *Power*.—Testator empowered his executors for the time being to advance to his nephew any sum or sums of money not exceeding 30,000*l.* The executors exercised the power to the extent of 20,000*l.*

Held, that they were not precluded thereby from making a further advance to the nephew.

The case of *Brown v. Nisbett*, 1 Cox, 13 observed upon. *Webster v. Boddington*, 16 Sim. 177.

2. *Power*.—Stock was transferred to trustees in trust for such persons as *A.* and his wife should jointly appoint; and, in default of appointment, in trust during their joint lives for the separate use of the wife; and in case *A.* should die first, in trust for his wife absolutely; but if she should die first, in trust for him for life, and, subject thereto, in trust for such persons as his wife, notwithstanding her coverture, should by will appoint, and, in default of such appointment, in trust for her next of kin.

The wife, in *A.*'s lifetime, made a will in exercise of the last-mentioned power. *A.* died before her. On her death, her will was admitted to probate, but the probate was limited to the property which she had power to dispose of.

Held, that the will was inoperative. *Price v. Parker*, 16 Sim. 198.

3. *Residue*.—Testatrix having power under her late husband's will, to dispose of 10,000*l.* consols, recited the power, and then proceeded thus:—"Now I do give and bequeath the said 10,000*l.* consols in manner following, that is to say,—I give to *G. A.* the sum of 500*l.* sterling; I give to my executors the sum of 600*l.* consols in trust to pay the dividends to *S. T.* during her life, and after her decease, the said 600*l.* to sink into the residue of my estate; I give and bequeath to *H. B.*, his executors, &c., all the rest and residue of the said 10,000*l.* consols, after deducting therefrom the legacies above-mentioned.

G. A. died in the testatrix's lifetime.

Held, that the 500*l.* given to him was not to

be deducted from the 10,000*l.* consols. *Carter v. Paggart*, 16 Sim. 423.

Case cited in the judgment: *Falkner v. Butler*, Amb. 514.

ASSETS, ADMINISTRATION OF.

Exoneration of Real and personal estate.—Priority of liability.—A testator had mortgaged his estate *S.* By his will, he directed his debts, other than the mortgage, to be paid out of a specified part of his personal estate; he recited his intention of forthwith paying off a great part of the mortgage debt, and he directed that "the balance" of such mortgage should be paid by sale of timber on the *S.* estate. He made no bequest of his general personal estate: *Held*, that the mortgage was payable first out of the general personal estate; secondly, out of the descended real estate; and, thirdly, out of the timber money. *Lomax v. Lomax*, 12 Beav. 285. See *Administration*.

BEQUEST FOR LIFE.

Bequest to the children of *A. B.* for life; but in case of death before marriage, his share to go to the survivors. In the margin was written,—"What is to become of the principal? The share of the parent to be divided amongst the children, if any. *Quere*, to be put in afterwards in a proper manner." The children of *A. B.* all died unmarried. *Held*, that the gift was for life only, and not an absolute gift cut down merely to admit their children. *Kay v. Winder*, 12 Beav. 610.

"CHILDREN."

1. Construction of the word "children" as under the special words of a will, describing both legitimate and illegitimate children.

A testator bequeathed legacies to his children, *M. S.*, *J. W.*, and *N.*, appointing his wife their guardian, and directing the application of the interest for their maintenance. He then directed that the remainder of his personal estate, and the residue of the proceeds of certain real estates, should be divided between all his children of his first and second marriages. The testator then charged other parts of his real estates with certain annual payments, and directed that the remainder of the rents and profits should be divided among all his said children. The testator then directed, that, in case one or more of the children by his second wife should die without issue under 21, their shares and legacies should go between his second wife and such of his children by her as should be living, and he gave the residue of his estate to all and every of his children: *Held*, that the said *S.*, who was a child by the second wife before marriage, was within the description of "children" contained in the will, and entitled to share with the legitimate children of the testator in the residuary gifts. *Boars v. Davies*, 7 Hare, 498.

2. Period when legatees are to be ascertained.—**Income.—Maintenance.**—A residuary gift to trustees, with a direction to apply such part of the interest as they might deem necessary in the maintenance of all and every the testator's grandchildren, the children of the testator's

two sons, until they severally attained the age of 21, and to accumulate the surplus, and when and as each of such grandchildren should attain the age of 21 years, to pay to each of them 2,000*l.*, and as soon as all and every the said grandchildren should have attained their ages of 21, to pay and divide the trust fund unto and amongst all and every his said grandchildren: *Held*, to be a gift for the benefit of all the children of the testator's two sons, born or to be born,—not confined to children living at the death of the testator, and not distributable upon the youngest grandchild for the time being attaining 21; but that, on attaining 21, the grandchildren were entitled to the interest on their presumptive shares, until another grandchild should be born. *Maisewaring v. Beecor*, 8 Hare, 44.

See *Laufal Issue: Power of Appointment: Vesting*.

CONSTRUCTION.

1. Testator bequeathed 5,000*l.* in trust, to pay the interest to his nephew John, for life, remainder to John's first son for life, remainder, as to the principal, for the children of John; and for default of such issue to pay the interest to the second and other sons of John successively, and to their respective issue; and, for default of issue male of John, to pay the interest to the testator's nephew, Charles for life, &c. &c.

Held, that the words in italics, did not mean: "if John shall never have a son," so as to make the limitation to Charles to take effect by way of substitution, but that *that* and all the other limitations subsequent to the limitation to the first son of John, were void for remoteness. *Barley v. Eestyn*, 16 Sim. 290.

2. Testator devised a manor and farm to *A.* and *B.* and their heirs to the use of his son for life, remainder in trust that the trustees, or the survivor of them, should pay and apply the rents and profits, or so much thereof as they or he should think proper, for the maintenance of his son's younger children during their minorities, and, after all those children should have attained 21, to the use of them, their heirs and assigns.

Held, that *A.* and *B.* did not take the legal estate in fee in the devised premises; but that the son took the legal estate for his life, with remainder to *A.* and *B.* for a chattel interest, with remainder to the son's younger children in fee. *Tucker v. Johnston*, 16 Sim. 341.

3. Testator gave 1,000*l.* to his sister for her, or for her children's sole use and benefit for ever; and directed his executors to pay the same to her as soon as practicable.

Held, that the word "or" was to be taken disjunctively, and that the testator intended his sister to take the 1,000*l.* absolutely and exclusively, (but not for her separate use,) if she survived him; but if she did not, that it should go to her children. *Chipchase v. Simpson*, 16 Sim. 465.

4. Testator devised his real estates to trustees, in trust to convey them to his children, as tenants in common, on their attaining 21;

and, in the case of the death of any of them, without issue, under that age or before they should acquire vested interests therein, he directed the trustees to convey the shares of those so dying to the survivors of them and their heirs, in equal shares; but in case any of his children should die at any time either before or after him, having issue, then he directed the trustees to convey the shares of those so dying to the issue whom they should have, in equal shares, and to their respective heirs on their attaining 21. The testator had several children all of whom attained 21.

Held, that their shares of his estates became absolutely vested in them in fee on their attaining 21. *Wheable v. Withers*, 16 Sim. 505.

5. Testator gave the residue of his personal estate to trustees in trust for his wife for life, and after her death, to his daughter, who was an infant at his death, "the same to be always considered as vested in her upon her attaining 21, and to be subject to her disposition thereof;" and, by a subsequent clause, the testator gave the property over, in case his daughter should die under 21, or without disposing of the property by her will.

Held, that the daughter was entitled to the property, not absolutely, but only for life with a power to dispose of it by will. *Borton v. Borton*, 16 Sim. 553.

6. A testator gave the residue of his estates to trustees in trust to pay the income to each of his seven children for life, and after the decease of each of his children, in trust to distribute the capital of each deceased child's share among his or her children; and in case any of his children should die without issue living at his or her death, then to divide the interest and capital of such child so dying equally amongst the survivors or survivor of the testator's said seven children, or the issue of such of them as should be then dead, in manner by the will before directed concerning the original shares. The will contained a clause against the alienation of any share. Of the seven children who survived the testator, two died leaving children, and A. and B., two other of the children, successively died without issue: *Held*, that the share which accrued to B. on A's death followed B's original share and passed to the surviving children of the testator and the issue of the two children who had died leaving issue. *Goodman v. Goodman*, 1 De-G. & S. 695.

Cases cited in the judgment: *Milcom v. Awdry*, 5 Ves. 465; *Eyre v. Marsden*, 4 My. & C. 731; *Leeming v. Sharratt*, 2 Hare, 14.

7. Testator devised certain tithes to his nephews, D. and W., for their lives, successively; and, after the expiration thereof, to the several provisions and uses therein expressed and contained, of and concerning his real estate: and he devised all his real estates of what nature or kind soever, and wheresoever situate, subject to the payment of his debts, &c., in aid of his personal estate, to his niece and her sons in strict settlement, with remainder to his nephew, W. and his sons, and to two other persons and their sons, in like manner, with remainder to

another person in fee. The niece married and had a son after the date of the will; and the testator, by a codicil, devised all his real estates of what nature or kind soever, to that son, for life, with limitations, by way of remainder, to his first and other sons in tail male, and, on failure of such issue, he devised all his said real estates in the manner mentioned in his will, and declared that the devises therein-before made, should take effect in precedence to the devises of his real estates contained in his will: *Held*, that the words "all my real estates," in the will, did not include the tithes but that these words, in the codicil, did include them; and, consequently, that the estates for life, in the tithes, limited to the testator's nephews, D. and W., by the will, were postponed to the limitations in the codicil, to the sons of the testator's niece and his sons. *Evans v. Evans*, 17 Sim. 86.

8. Where the words of a will are capable of a construction which will give effect to every word, it is not within the competency of the Court to alter their allocation. *Wilson v. Eden*, 12 Beav. 454.

9. A testator, by his will dated after the recent Will Act had come into operation, expressed himself thus:—"And, as to all and singular the residue and remainder of my messuages, lands, and hereditaments, whatsoever and wheresoever, and of what tenure or nature soever, and, generally, all the freehold, copyhold, and leasehold estates whereof I am now seised or possessed;" and in a subsequent part of his will, he used these words:—"I give to my nephew, all such manors, farms, &c. as well freehold as copyhold and leasehold, as are now vested in me, or, as to the said leasehold premises, as shall be vested in me, at the time of my death, as a trustee; to hold, unto and to the use of my said nephew, his heirs, executors, &c., upon the like trusts as the same are now or shall be vested in me." The testator purchased a freehold estate after the date of his will; *Held*, that the will could not be construed to speak and take effect, with reference to the estates to which the testator died beneficially entitled, as if it had been executed immediately before his death. *Cole v. Scott*, 16 Sim. 259.

10. Testator devised estates to trustees, in trust to pay 300*l.* a year, for the maintenance, clothing and education of his son's children, during the life of their father. The son had three children, all of whom attained 21, and then, one of them died.

Held, that the personal representative of the deceased child was entitled to one-third of the 300*l.* a year during the father's life. *Lewes v. Lewes*, 16 Sim. 266.

11. Testator gave one-third of his residue in trust for his sister, the interest to be paid to her during her life, and the principal, at her death, to go to the heirs of her body share and share alike. The sister had five children living at the testator's death.

Held, from the context of the will, that she took for life, with remainder to her children as tenants in common. *Symers v. Jobson*, 16 Sim. 267.

12. Under the provision in the Wills' Act, 1 Vict. c. 26, that every will shall be construed as if it had been executed immediately before the death of the testator, unless a contrary intention should appear by the will, it is not necessary that the intention should be expressed in terms, but it may be inferred by the Court, upon a fair and usual construction of the language of the will. *Cole v. Scott*, 1 H. & T. 477; 1 M'N. & G. 518.

CONVERSION.

1. *Heir and residuary legatee*.—Testator directed the trustees of his will to sell his real estates and retain 5,000*l.* out of the proceeds, and to stand possessed of that sum in trust for A. for life, remainder in trust for A.'s son for life, with divers remainders over, all of which were void for remoteness. And he gave his personal estate, after payment of the legacies thereinafter given, and the residue of the money to arise by the sale of his real estates after making good the 5,000*l.* to B. A. died a bachelor. The testator's heir also died.

Held, that the heir's personal representative was entitled to 5,000*l.* *Burley v. Evelyn*, 16 Sim. 290.

2. *Real estate*.—The testator gave his real and personal estate to trustees, upon trust to apply the rents, issues, and proceeds for the benefit of his two daughters, with a direction, on the youngest attaining 21, to divide the whole into two equal moieties, of which the testator gave one moiety to his two daughters equally, and directed the other to be placed out upon government or real securities, and the dividends and interest thereof to be paid to the daughters for their lives, and upon their death the said monies and effects to be divided amongst their children: *Held*, that there was no conversion by the will of the moiety of the real estate devised to the daughters on the youngest attaining 21. *Cornick v. Pearce*, 7 Hare, 477.

COPYHOLDS.

Sale and conversion.—Where a testator, by his will, gave his estate, including copyhold of inheritance, leaseholds, merchandise, money in the funds, and cash, to his children and grandchildren, in 20 aliquot shares, and directed some of such shares to be invested in the government funds for the infant legatees, and requested his executors on his death to get his property together and divide it, it was *held*, that the will must be taken to direct a sale and conversion of the copyhold estate. *Mower v. Orr*, 7 Hare, 475.

DECREE, FORM OF.

Inquiry.—*Costs*.—*Trustee*.—W. S. by will gave all his real estates unto and to the use of W. T., his heirs and assigns, upon trust out of the rents to pay to M. S., during her life, an annuity of 150*l.*, and to apply the surplus rents, after payment of the annuity and such other charges and expenses as thereafter mentioned, unto the testator's daughter C. N., wife of B. N., during the life of M. S., and after the decease of M. S., the testator directed that the estates

should remain unto W. T., his heirs and assigns, to the use of C. N. for her life, with remainder to the use of W. T., his heirs and assigns, during C. N.'s life, in trust to preserve, &c.; and after the decease of C. N., to the use of B. N. for life, with remainder to the use of W. T., his heirs and assigns, during the life of B. N., in trust, &c.; and after the decease of B. N., in case he should survive C. N., to the use of all the children of the body of C. N. to be begotten, as tenants in common; and there was a proviso that, in case B. N. and C. his wife, or the survivor, should desire a sale of the estates, it should be lawful for W. T., his heirs and assigns, to sell the same with the consent of B. N. and C. his wife, and sign and give receipts for the purchase monies, which were to be effectual discharges to the purchasers. The will contained a direction to lay out the sale monies in the purchase of other hereditaments, or upon good security at interest, in the name of W. T.; and the hereditaments to be purchased were directed to be conveyed to W. T., his heirs and assigns, to the uses before mentioned; the interest of the sale monies was directed to be paid to the parties entitled to the rents, and the principal money, in case of no purchase being made, was directed to be divided amongst C. N.'s children equally, at 21. After the death of W. T., G. T., the sole devisee of his estates, subject to a gross payment of 50*l.* thereout, joined with B. N. and C. his wife in the sale and conveyance of W. S.'s estates to a purchaser thereof, and B. N. was allowed to receive the purchase money, and gave to G. T. a bond of indemnity to save her harmless in respect of such receipt. C. N. survived her husband B. N. several years, and also G. T., who by her will appointed C. S. her executrix. On bill filed by the executors of C. N. and the assignees of her life interest, against C. S. and the other parties interested in the purchase monies: *Held*, that the trust estates under the will of W. S. were vested in W. T., and that, in the absence of any act of C. N. whilst *sui juris*, affecting her rights as tenant for life, the plaintiffs were entitled to a decree for an account against C. S., the legal personal representatives of G. T., to the extent of C. N.'s life interest in, but not to any declaration that the estates of G. T. was liable to account for the principal of the sale monies.

Held, that if an inquiry had not been already directed to that effect, in a previous suit instituted for administering B. N.'s estate, an inquiry would have been directed as against the *cestuis que trust* under B. N.'s will, whether the sale monies received by B. N. were or not laid out by him in the purchase of other estates, there being an allegation to that effect in the answer of C. S.

Held also, that the defendants, the parties in remainder under the will of W. S., having adopted and endeavoured to reap the benefit of the present suit, and taking nothing from it, were not entitled to their costs. *Rackham v. Siddall*, 2 H. & T. 44; 1 M'N. & G. 607.

[To be continued.]

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, OCTOBER 18, 1851.  
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ADMINISTRATION OF CRIMINAL JUSTICE AMENDMENT ACT.

THE provisions of the act 14 & 15 Vict. c. 100, "for further improving the Administration of Criminal Justice," have already been laid before our readers without abbreviation (*ante*, p. 371), but as the act has now come into practical operation at the Quarter Sessions, it may be convenient briefly to recall attention to the numerous and extensive changes the Statute may be expected to effect in the administration of the Criminal Law.

The two evils which the statute aims at remedying, are announced in the preamble to be;—1st, the frequency with which offenders escape conviction on their trials, by reason of the technical strictness of criminal proceedings; and, 2ndly, the failure of justice occasioned in criminal trials by reason of variances between the statement in the indictment on which the trial is had and the proof of circumstances therein mentioned, not material to the merits of the case.

To meet these admitted defects in the system of criminal procedure, which, whilst they afford no protection to innocence have brought a scandal upon justice by facilitating the escape of the guilty, the statute proposes to simplify the form of indictments, to give increased power to Judges and Jurors, in order to give assurance that the trial of persons charged with criminal offences shall be disposed of on the merits; and to regulate the proceedings at the trial.

In indictments for murder and manslaughter, the allegations hitherto held to be necessary, as to the manner in which and the means by which, death was caused, may in future be dispensed with, as in an indictment for murder, it is declared to be sufficient to state, "that the defendant

[by which, we presume, is meant the accused], did feloniously, wilfully, and of his malice aforethought kill and murder the deceased;" and in an indictment for manslaughter, to charge "that the defendant did feloniously kill and slay the deceased." In indictments for forging, uttering, stealing, embezzling, concealing or destroying written or printed instruments, or obtaining such instruments by false pretences, or for engraving, printing, or having unlawful possession of the plates or paper on which such instrument may be printed, the instrument may be described by the name it is usually known by, or by its purport, without setting out any copy or fac-simile, or otherwise describing the same or the value thereof."

An important practical change is also permitted in indictments for obtaining property by false pretences, as well as in indictments for forging and uttering instruments. It will not in future be necessary, in such indictments, to aver or prove an intention to defraud any particular person, but it will be sufficient to allege that the act was done "with intent to defraud."

Another enactment of great importance is contained in the 9th sect., which provides, that a person charged with a felony or misdemeanour, who is not found to have completed the offence charged, may be convicted on that indictment, for an *attempt* to commit the offence, and punished accordingly.

The 12th sect. declares that a party guilty of a felony, but indicted for a misdemeanour, is not to be acquitted of such misdemeanour, but the section does not state affirmatively that he may be found guilty of the felony or misdemeanour; and in this respect the clause strikes us as being framed with less clearness and precision than are usually displayed throughout the act. Our readers shall judge for themselves. The clause is

as follows:—"If upon the trial of any person for misdemeanour, it shall appear, that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanour, and no person tried for such misdemeanour shall be liable to be afterwards prosecuted for felony on the same facts, unless the Court before which such trial may be had shall think fit, in its discretion to discharge the jury from giving any verdict upon such trial and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanour."

By subsequent sections, accessories to a felony, or receivers of stolen property, may be charged with substantive felonies in the indictment, although the principal felon may not be included in the indictment or amenable to justice,—three larcenies from the same person within six months, may be included in the same indictment,—and coin and bank notes may be described simply as *money*, without specifying or proving any particular coin or note.

Under the present statute, the presiding judge on a criminal trial will have a power commensurate to that of a judge at Nisi Prius in civil actions, to amend variances between the indictment and the evidence offered in proof thereof, whether relating to the name of any county, city, town, or parish; or the name of any person; or the ownership of any property; or the name or description of any matter or thing; and the judge's discretion in such cases is to be governed by the consideration whether the variance is material to the merits, and if the accused may be prejudiced thereby. A discretion is also given to the judge, after amendment, either to proceed with or postpone the trial.

Increased authority is given for directing the prosecution of persons supposed to be guilty of perjury, and the trial of indictment for this offence, when alleged to have been committed during a trial, is simplified by the enactment, that a certificate of such trial, signed by the officer of the Court or his deputy, shall be sufficient evidence of such trial, without producing any formal record.

In future all objections of a technical nature for any defect apparent on the face of the indictment, must be taken by demurrer or motion to quash, before the jury is sworn; and as the Court has in all such cases the power of ordering an immediate

amendment, the privilege of taking such objections is not likely to be often exercised, as it could produce no substantial benefit to the accused.

Numerous and important as are the changes introduced by the act under consideration, it seems only to have been deemed necessary by its framers, to repeal *two* provisions of the existing Statute Law. The 11th sec. of the stat. 7 W. 4, and 1 Vict. c. 85, which authorised a jury to find a person charged with a crime, including an assault on the person, guilty of such assault only, and the construction of which excited so much doubt in the *Birds' case*, is totally repealed, but it is expressly provided, that upon an indictment for robbery, the jury shall be at liberty to find the accused guilty of an assault with an intent to rob. The 60 Geo. 3, and 1 Geo. 4, c. 4, s. 3, which gave a defendant charged with misdemeanour, and committed or held to bail not more than 30 days before the Session at which the indictment was found, the *right to traverse* until the next session, is also totally repealed; and it is expressly enacted, that "no person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him;" but that the Court, if of opinion that the defendant should be allowed further time to prepare for his defence, may adjourn the trial to the next Session, upon such terms as to bail or otherwise as to such Court shall seem meet. This is a very important provision, and in the exercise of the discretion with which they are entrusted under it, we may be excused for expressing our hope, that Justices of the Peace at Sessions will imitate the liberal and indulgent spirit with which the Judges at the Assizes and the Central Criminal Court uniformly entertain applications from prisoners recently committed, for the postponement of their trials. The expense consequent upon the detention of a prisoner, from one session to the next, should never be allowed to influence the decision of the Bench, when there is a possibility that by precipitating the trial injustice may be done to the accused.

The purpose of this notice is merely to direct attention to the leading provisions of the statute. As already intimated, it appears to us to be conceived and framed in a just and liberal spirit, and with the manifest desire to effect amendments in a branch of the law which the public and the legal profession have long concurred in thinking required amendment. The practical operation of the various alterations introduced will

require to be tested by experience, before it is possible to predict with confidence, as to the result of an experiment, the importance of which can hardly be exaggerated. The application of the statute to particular cases will afford a more convenient opportunity hereafter for a critical examination of its various provisions.

LEGAL EDUCATION.

THE INNS OF COURT.—THE INCORPORATED LAW SOCIETY.

It is manifest that along with the reforms which are now projected in the three great departments of the Law:—Equity, Common Law, and Conveyancing,—an improved system of Legal Education will be enforced. Anciently the Inns of Court and Chancery formed one great University of the Law, and we are told that the sons of the nobility were enrolled amongst its members and there pursued their studies, with all the advantage of Readings,—Mootings,—and Examinations. The doors of these ancient and honourable societies should not be shut against students of rank or wealth. The more students of the law and the more educated and highly endowed the better.

But let no one be called to the Degree of Barrister of Law, who has not attended the lectures or readings, and been duly examined at one of the Inns of Court. There should be no “amateur” barristers, whose only object is to qualify themselves as men of five or seven years’ standing to take lucrative offices, which ought to be reserved for the real student, who can prove himself on examination to be fit and capable to discharge the duties of a legal adviser, in at least one department of the law.

Neither have we any wish that persons who possess political, or family or personal interest, should be debarred from entering the profession and qualifying themselves to *deserve* by their legal knowledge the prizes of office. We ask only that they should be duly qualified. The public interest imperatively demands thus much of the Benchers of the Inns of Court. The welfare (if not the existence in their present constitution) of those learned societies requires the strict performance of this duty; and the Benchers are bound in justice to the meritorious student, and for the encouragement of sound legal learning, to call no one to the rank and honour of a barrister who has not fully proved his competency.

If the Inns of Court should thus return to their ancient ways, and resume their excellent course of proceeding, they would speedily raise the character of our noble profession in public esteem, and remove the reproach cast upon ignorant and briefless barristers; and an effectual reform in these respects would go far to prevent the occurrence of such scenes as have of late, unfortunately, been witnessed in some of the Inferior Courts.

Nor are these suggested real reforms without modern precedent and example. We laid before our readers last week the excellent course of study adopted at *Gray’s Inn*, where lectures, mootings and examinations are admirably conducted and regularly attended by about 40 students.

In the discussions on this subject which have lately been renewed in the public press, it has been forgotten to notice the improvements which have been effected in the legal education of *attorneys and solicitors*. In 1833, now 18 years ago, three several courses of lectures were established at the *Incorporated Law Society*, and have been successfully continued to the present time. On an average 200 articled clerks have attended these lectures. Some attend one year only, some two years and a few three years. It may therefore be fairly computed that nearly 2,000 of the present practising attorneys have had the advantage of hearing one or more courses of Law Lectures.

Again, in 1836, the Examination of Articled Clerks was instituted by the Judges, at the suggestion of the Incorporated Law Society, and subsequently sanctioned by parliament under the Attorneys’ and Solicitors’ Act of 1843, and upwards of 400 candidates have been annually examined at the Hall of the Society in Chancery Lane, numbering in 15 years no less than 6,295, of whom 5,918 were passed.¹

Nor should it be forgotten, that besides the lectures and examination, there are now 10,000 volumes in the Library of the Society, to which the Members and their Articled Clerks have access from nine in the morning till ten in the evening. And that the Society have investigated numerous cases of mal-practice, and, where necessary, have applied to the Court to remove the offenders from the Roll or opposed their re-admission. The members of the Law Society have gained great credit by their liberal subscriptions and constant support of these objects, which from time to time have been

¹ See the last Annual Report, p. 437, *ante*.

judiciously and successfully carried out by the Council of the Society. A sum of not less than 90,000*l.* has been expended in the Land, Buildings and Library of the Society, exclusive of their large annual disbursements, towards which about one-third is received in the fees of examination and registration.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

INHABITED HOUSE DUTY.

14 & 15 Vict. c. 36.

Duties granted on inhabited houses as specified in the schedule annexed, in lieu of duties hereinafter repealed; s. 1.

Duties granted to be under care of Commissioners of Inland Revenue.

Powers and provisions of former acts to be in force; except as herein provided; s. 2.

Market gardens and nursery grounds not to be included in valuation of houses; s. 3.

Duties on windows and lights to cease on commencement of the duties granted by this act; except those uncollected and penalties, &c.; s. 4.

Persons to be liable to the same duty for armorial bearings as if chargeable to duties under 48 G. 3, c. 55; s. 5.

Assessors already appointed to be assessors for the current year under this act; s. 6.

The clauses of the act are as follow:—

An Act to repeal the Duties payable on Dwelling Houses according to the Number of Windows or Lights, and to grant in lieu thereof other Duties on Inhabited Houses according to their annual value. [24th July, 1851.]

Whereas under and by virtue of an act of the 48 Geo. 3, c. 55, certain duties are now payable in England, Wales, and Berwick-upon-Tweed and in Scotland respectively upon dwelling houses, and are assessed and levied according to the number of windows or lights therein as set forth in the schedule marked (A.) to the said act annexed; and it is expedient that in lieu thereof the duties on inhabited dwelling houses set forth in the schedule to this act annexed should be assessed and levied according to the annual value of such dwelling houses: Be it therefore enacted as follows:—

1. From and after the 5th day of April, 1851, in England, Wales, and the town of Berwick-upon-Tweed, and from and after the Term of Whitsunday, 1851 in Scotland, in lieu and instead of the said duties so payable as aforesaid, and which are hereinafter repealed, there shall be assessed, raised, levied, collected,

and paid unto and for the use of her Majesty, her heirs and successors, upon inhabited dwelling houses in and throughout Great Britain, the several duties set forth in the schedule to this act annexed, payable according to the annual value of such dwelling houses, which said schedule shall be deemed and taken to be part of this act.

2. The said duties shall be denominated and deemed to be duties of assessed taxes, and shall be under the care and management of the Commissioners of Inland Revenue for the time being; and all powers, provisions, rules, regulations, and directions, fines, forfeitures, pains, and penalties, now in force contained in or enacted by any act or acts relating to the duties of assessed taxes, and also all powers, provisions, rules, regulations, directions, and exemptions, fines, forfeitures, pains and penalties, contained in or enacted by any such act or acts as aforesaid, with reference to the duties on inhabited dwelling houses according to the value thereof, as set forth in the schedule marked (B.) annexed to the said act of the 48 Geo. 3, and which were in force in regard to the said last-mentioned duties at the time of the repeal of such duties by an act of the Session holden in the 4 & 5 Will. 4, c. 19, except as hereinafter excepted, shall severally and respectively be and become in full force and effect with respect to the duties hereby granted, and shall be severally and respectively duly observed, applied, practised, and put in execution in the respective parts of Great Britain, for assessing, raising, levying, collecting, receiving, accounting for, and securing the said duties hereby granted, and otherwise in relation thereto, so far as the same are or shall be applicable, and are not repealed or superseded by and are consistent with the express provisions of this act, as fully and effectually, to all intents and purposes, as if the same powers, provisions, rules, regulations, directions, and exemptions, fines, forfeitures, pains, and penalties, were particularly repeated and re-enacted in this act with reference to the said duties hereby granted: Excepting always out of this enactment any provisions for or in relation to compositions for the said duties set forth in the said schedule marked (B.), the exemption in Case II. of exemptions contained in the same schedule, and all the provisions of an act of the Session holden in the 3 & 4 Will. 4, c. 39, and of an act of the Session holden in the 3 & 4 Vict. c. 17.

3. Provided always, that no market garden or nursery ground occupied by a market gardener or nurseryman *bond fide* for the sale of the produce thereof, in the way of his trade or business, shall be included in the valuation of any dwelling house and premises in charging the duties made payable by this act.

4. The duties granted by the said act of the 48 Geo. 3, and now payable in England, Wales, and Berwick-upon-Tweed and in Scotland respectively, upon dwelling houses, according to the number of windows or lights therein, as

set forth in the schedule marked (A.) to the said act annexed, shall, at and upon the respective periods appointed for the commencement of the duties granted by this act, severally cease and determine; save and except as to any of the said duties hereby repealed which, having been assessed or charged, shall not have been collected, levied, recovered, and accounted for, and also as to all arrears of any of the said duties, and all penalties and forfeitures incurred at or before such respective periods, all of which said duties and arrears of duties, and penalties and forfeitures, shall respectively be collected, levied, recovered, paid, and accounted for as if this act had not been passed.

5. And whereas a certain rate of duty is now payable in respect of armorial bearings or ensigns used or worn by persons chargeable to the duties on houses, windows, or lights made payable by the said act of 48 G. 3. :

All persons who shall be chargeable to duty under this act shall in respect of armorial bearings or ensigns used or worn by them be subject to the same rate of duty as they would have been liable to if they had been chargeable to the said duties made payable by the said act.

6. And whereas assessors of the duties of assessed taxes have in many parishes and places been already appointed for the present year : The persons so appointed such assessors shall, without any further or other appointment or authority, become and be assessors of the duties granted by this act for the said year in and for the same parishes and places respectively.

The SCHEDULE referred to; containing The duties by this act made payable upon inhabited dwelling houses in and throughout Great Britain, according to the annual value thereof; that is to say,

For every inhabited dwelling house which, with the household and other offices, yards, and gardens therewith occupied and charged, is or shall be worth the rent of 20l. or upwards, by the year,—

Where any such dwelling house shall be occupied by any person in trade who shall expose to sale and sell any goods, wares, or merchandise in any shop or warehouse, being part of the same dwelling house, and in the front and on the ground or basement story thereof;

And also where any such dwelling house shall be occupied by any person who shall be duly licensed by the laws in force to sell therein by retail beer, ale, wine, or other liquors, although the room or rooms thereof in which any such liquors shall be exposed to sale, sold, drunk, or consumed shall not be such shop or warehouse as aforesaid;

And also where any such dwelling-house shall be a farm-house occupied by a tenant or farm servant, and *bonâ fide* used for the purposes of husbandry only,

There shall be charged for every 20s. of such annual value of any such dwelling-house, the sum of 6d. ;
And where any such dwelling-house shall not be occupied and used for any such purpose and in manner aforesaid there shall be charged for every 20s. of such annual value thereof the sum of 9d.

NOTICES OF NEW BOOKS.

The Book of Almanacs, with an Index of Reference, by which the Almanac may be found for every year, whether in Old Style or New, from any Epoch, Ancient or Modern, up to A. D. 2000 ; with means of finding the day of any New or Full Moon from B. C. 2000 to A. D. 2000. Compiled by AUGUSTUS DE MORGAN, Sec. R. A. S., F. C. P. C., of Trinity College, Cambridge ; Professor of Mathematics in University College, London. London ; Taylor, Walton, and Maberly. 1851. Pp. xix., 89.

THIS is a very scientific and valuable work, and does much credit to its well-known author. We notice it as useful to the Lawyer, who may require it in regard to old deeds and documents, when reference to a collection of almanacs cannot be made, or indeed in preference thereto ; and it will be invaluable in compiling future almanacs. We have tested the accuracy of the book in several instances.

Its objects are. 1. To enable any one, without calculation, to place before himself the almanac for any year of old style, or any year of new style from A. D. 1582 to A. D. 2000 ; with its Roman and modern European month days, its week days, feasts fixed and moveable, law and university terms.

2. To give the means, without calculation, of verifying or restoring any part of the index, in the event of a figure being misprinted or broken out of the stereotype plate.

3. To enable the reader, without calculation to decide on the moonlight of any month : that is, to find at once, within a day (in some rare cases with an error of two days) the days of new and full moon.

4. To supply a very short and easy method of calculating, always within two hours, and usually within less, the new and full moon for any month of any year from B. C. 2000 to A. D. 2000.

COMPARATIVE NUMBER OF BILLS AND CLAIMS IN CHANCERY.

THE following is the evidence taken before the Select Committee on the Masters Jurisdiction in Equity Bill, of Richard Howell Leach, Esq., Senior Clerk in the Registrars Office:—

"Have you got a return from the Record and Writ Office of the number of bills filed since the New Orders?—I have.

"Does it distinguish the months?—It is a return of the number of bills filed in the year ending May 21, 1850, when the orders of Court respecting claims came into operation; and the number of bills and claims filed in the succeeding 12 months, distinguishing the number in each month, and it also distinguishes the number in the first six months, and in the second six months. I requested the clerk of records and writs to make out this return, to enable me to give an answer to a question put by Lord Cranworth the first day this Committee sat, as to the number of bills and claims filed in the first six months, and also in the second six months of the latter year, with the view of ascertaining whether the mode of proceeding by claim had been favourably received or not. I find in the first six months of the year, commencing on the 22nd May, 1850, 769 claims were filed, that is, from the 22nd of May, 1850, to the 21st Nov. 1850. The second period is from the 22nd Nov. 1850, up to the 21st of May, 1851, which completes the year. In the last six months the number was 680, showing a falling off of 88 claims.

"Have you got the falling off in proportion to the number of bills filed?—In the first six months of the same year there were also 600 bills filed; in the second six months there were 890 bills filed.

"The bills increasing, and the claims falling off?—The bills increasing, and the claims falling off. In the previous year, commencing on the 22nd May, 1849, there were filed in the first six months, 1,030 bills, and in the second six months, 1,447 bills; making for the whole year, 2,477 bills.

"There is an increase there in the second period?—There is an increase.

"Therefore that would bear upon the argument as to the second period of the year in which the claims decreased, as compared with the bills?—The increase in the second year, however, is very remarkable; the return shows in the first year, 2,477 suits; in the second year there were 1,490 bills, and 1,488 claims, making a total of 2,938 suits, showing an increase in the number of suits of 461, reckoning a claim as a suit, which it is, under another form.

"Still we are talking of the proportion of claims to suits in two cases?—In the second year, when the claims were introduced, the number of claims is very nearly one-half of the whole number of suits. The increase of suits in that year seems to me very remarkably to illustrate this fact, that the more you give

facilities to the public to come into the Court of Chancery, by affording a quick and inexpensive mode of procedure, the more will they avail themselves of the opportunity.

"It is suggested, that the proportion of claims to bills at first was greater than the proportion of claims to bills afterwards; now, if you take the proportion of claims to bills at first, and compare it with the proportion of claims to bills at the time when the bills had a natural increase, as is shown by the year before, the proportion of bills in the first half and the second half of that year would confirm the impression?—I do not think there is anything very striking to be got from this return in that respect.

"There is a diminution in the number of claims, however, of about a hundred?—There is some diminution in the number of claims, in proportion to the number of bills.

"There is a diminution in the number of claims, and an increase in the number of suits?—There is.

Bills, First Year	2,477
Bills, Second Year	1,490
Claims, ditto	1,448
	<hr/> 2,938

461 Increase of Suits in the Second Year.

"Do you consider that great advantage has arisen from giving facility by orders respecting claims?—I think there are very great advantages in the simpler class of cases to which they were originally intended to apply, and I think that is very much seen by the way in which suitors have availed themselves of the facility. It has been mentioned by some of the witnesses I have heard examined, that considerable expense has been occasioned by the necessity for service of writs of summons (which set out the claim at length) upon every party; whereas if the proceeding is by bill, several defendants, on being served with subpoena, may join in their defence, and take but one office copy of the bill. Probably, if it were thought desirable to remedy this, the difficulty might be obviated by omitting the recital of the claim in the writ of summons. I believe the opinion of the Bar is, that this mode of proceeding is not desirable, where the case is not a simple one, or where there is a probability of getting into a long contest of affidavits."

PROGRESS OF LAW REFORM.

OPINIONS OF THE PRESS.—THE TIMES.

THE following important remarks on the progress of the present state of the projected reforms in the various departments of the Law, extracted from *The Times* of 17th Sept., cannot fail to be read with peculiar interest;—

"The mode in which law reform in England has for the most part been effected can hardly be deemed satisfactory by any class, whether lay or learned. The bit-by-bit process appears, indeed, to cautious and timid persons, for a

time, the safest and, therefore, the wisest system of change. The aggregate of mischief, however, resulting from continued change, and its consequence, constant uncertainty, must, even to the most hesitating reformers, seem an enormous evil—one which eventually may surpass the mischiefs produced by sweeping and systematic changes."

The writer first notices the improvements in our *Criminal Law* :—

"Taking the first attempts of the late Sir Robert Peel as our starting-point, and coming down to the present hour, we find that something more than a quarter of a century has passed away while we have been attempting to improve the various branches of our old and entangled system of jurisprudence. We have in that time indeed changed the whole character of our *Criminal Law*, rendering it perhaps the most mild instead of the most savage and sanguinary code in Europe. By degrees in this branch of law and of procedure common sense and an enlightened benevolence have usurped the place of cruel, unmeaning, and intricate technicalities; the greatest possible security being attained for society at the least possible expense of pain to the criminals themselves and of anxiety to those by whom the law is administered. The comparatively simple nature of this portion of law has permitted us to attain, even by our slow process, to this beneficial result, which in this one case amounts almost to completeness. But, turning our eyes to any other portion of our legal system,—what a different scene do we behold!"

The subject of our *Equity* system is brought under review as follows :—

"For every part of the field of Equity we are without map or compass. The old landmarks have been removed, and no one believes that those which have been placed in their stead can remain for a year as now established. In the minds of the most enlightened of our lawyers a grave doubt has arisen as to the wisdom of the distinction between Equity and Law, and a very general belief is now entertained that, before many years have elapsed, the whole existing system of our Equity Courts will be swept away, and one uniform procedure, and one general class of Courts, endowed with all the powers of Law and Equity, will be adopted for the whole kingdom. If this anticipation be correct, then have we as yet done nothing in the way of settling either the substantive law or that of procedure. We have indeed unsettled nearly everything; but, beyond creating confusion, we have hardly advanced a step. Such, as regards Equity, is the product of a quarter of a century's constant and unremitting toll and change."

The state of the Law of *Real Property* is next observed upon :—

"Again, in all that relates to the *Law of Real Property* we seek in vain for certainty, or any settled and steady result. The old law,

with its intricate and tiresome and expensive modes of proceeding, has long been utterly condemned. But though we are quite ready to condemn the old system, we are utterly unprepared with a substitute. We are all quite apt at finding fault. We are ready and able to pull down, but we are without a creative mind capable of constructing a systematic and practical code in place of that we desire to discard. We are, therefore, ever busy at the labour of continuous *tinkering*. We pull down a little bit—we build up a little bit. What was originally sufficiently incongruous we render still more confused, and, at length, we have arrived at this happy result—no one part of the building agrees with, or corresponds to any other. The learned and unlearned are alike at fault in this mighty maze of law, and the toss up of a half-penny is a better guide than a learned counsel's opinion, inasmuch as it is far cheaper, and quite as likely to be correct."

The *Common Law* is thus noticed; with a graphic passage from Lord Brougham of what remains to be done :—

"In one thing, however—but in one thing alone—do we appear to have been consistent and systematic. We have introduced the same degree of confusion into every portion of the *Law*. The forms of procedure are not more settled than the law itself, and the Courts which administer the law are equally in a state of transition. If to-morrow all the proposals of the last Common Law Commission were adopted, everybody would instinctively feel that these changes would be but the harbingers of still greater alterations. The work of to-day lasts but for to-day; the unstable fabric is no sooner completed than it totters to its fall. Let us hear what one of our most active law reformers says on this head; let us hear what Lord Brougham, who has done so much, says as to what yet remains to be done.

"There are many further improvements in the system, or in the practice of our jurisprudence, which the sense of the community at large may reasonably and usefully urge upon the legislature; but it so happens that the present improvement comes from the experience of those engaged in administering the law, because others could not be so much informed of its necessity. The professional prejudices, therefore, which some have conceived against it appear wholly groundless. They should be reserved (but will probably be ineffectual) to resist attempts, which no doubt will soon be made to render Courts of Equity accessible to all, and grievous to none—to make Common Law procedure cheap, simple, and expeditious—to increase the frequency of the superior judge's attendance in the country, whether for trying causes or prisoners—to improve the ancient and inferior judicatures—to let the people know the Criminal Law they live under, and the procedure whereby they must be tried—to provide for its execution at the expense and on the responsibility of the State, and not of those suffering by its infraction. For these

great measures the public voice will be general and loud, though it has not been raised for the changes recently effected. This reflection may comfort the friends of improvement; not surely satisfying them as if enough had been gained; for well they know they must look back upon the past only to take courage and counsel—deriving from success the spirit to make new exertions, from experience the caution to make them safely; but never deeming their mission ended until all its objects have been attained:—

“ ‘ Counting nought done, while ought remains to do.’ ”

“ This is a gallant statement on the part of the veteran reformer, but assuredly the enumeration of the things yet to be accomplished, and the importance of the items thus set down, prove that what has been achieved is of little comparative moment when viewed in reference to its permanent results. Lord Brougham, in enunciating the reforms which will be demanded by the people, and which have yet to be conceded by the Legislature, goes in reality over the whole field of Law. He mentions as the subjects of future reform, Equity, and Equity Courts, the Courts of Common Law, whether of superior or inferior jurisdiction, the whole system of Common Law procedure, the Criminal Law and its administration, the promulgation of the Law itself, and, lastly, the manner in which it is to be executed. Can we, after such an enumeration by such a man, be accused of exaggeration when we say that we have indeed changed the Law without having permanently reformed it; that while we have attempted to improve, we have been successful only in confusing it; that, in short, we have had the will, but not the capacity of reformers? ”

The writer thus proceeds:—

“ Let no one fancy that because we say these things we are enemies of reform, or that we deprecate change. What we desire to insist upon is, that we have indulged in unsystematic, and piecemeal reform long enough. To the Profession we say, you can no longer successfully oppose a complete and searching change in the system of the Law and its mode of administration. Whatever may be the conceptions you form as to the influence of change upon your professional interests, the result will be the same; change is inevitable; and, as far as you are concerned, a long agony of transition is the most serious calamity that can befall you. Yield then, we say, to the spirit of the times in which you live, and act in accordance with, and not in opposition to, the wishes of the community at large. They desire cheap law, and cheap law they will have. But cheapness is not the only quality needed. The administration should be above suspicion, and the law itself certain, predetermined, and easy to be known.”

REGISTRATION OF MORTGAGES.

To the Editor of the Legal Observer.

SIR,—As the General Registration of Deeds is likely to be mooted again in Parliament under an amended form, it seems to me as well to suggest, to the Legislature and the consideration of your numerous professional readers, the expediency of establishing an office in London, where all *Mortgages* should be registered. Other incumbrances, as judgments and annuities, are registered in distinct offices; and, like them, the mortgage might be registered in its own district office at a small additional fee to the practitioner beyond the costs of the mortgage securities.

If the solicitor reside in the country, he would derive fees for the memorial and affidavit of execution, while the agent would receive the costs of immediate registering. This plan would obviate the justly-dreaded exposure consequent on provincial registration of mortgage deeds. Mortgage transactions constitute a great resource of honourable profit to the profession at large, especially in the country.

No borrower likes to have his affairs known, because the curiosity of people and the whisper of malice may attribute his conduct to any but the real causes, and many a peer and influential person may be pointed out as being “under heavy pecuniary engagements” to the great surprise of others; who, with such knowledge, pause before they will pay their rents or debts.

The bill before parliament, as originally framed, struck at the root of all order and at all security of property and family affairs. It is to be hoped, the forthcoming measure will be fraught with more good will to society, and juster regard for the honour of the legal profession; and so as not to shake, or impair, confidence between a client and his professional adviser.

A. B.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

EIGHTH ANNUAL ADDRESS OF THE COUNCIL.

It is important that our readers should be made acquainted with the views and proceedings of this active and influential Society, to which members of all branches of the profession belong,—judges, barristers, and attorneys. It may at least be said that the lawyers have not for some years past neglected the consideration of the most extensive changes both in Law and Equity and the practice of Conveyancing. The Council thus address their members and the public in general:—

“ In presenting their Eighth Annual Report, the Council have great pleasure in congratulating the Society on the general results which have attended its establishment. They think it will be admitted that the Society has succeeded not only in arousing the general attention of

the public to the important subject of the amendment of the law, but in being able, by means of its committees, to propose, for the consideration of the Society and the public, specific and practical plans for the improvement of those portions of our law which have been found, after examination, to be defective. In attempting to amend the law, it is obvious that a technical system like that prevailing in this country can only be safely altered by men skilled in the Law. An existing judicature may be abolished, the axe may be laid to the tree, and root and branch may be swept away, but the construction of a substitute can only be effected by persons intimately acquainted, not only with the system displaced, but with those general principles on which all systems should be founded. With their help, a better procedure may be framed—but with their help alone. More, however, than this is necessary. Law Reformers must always be in a minority in their own profession. This is borne out by the experience of all ages and all countries. Unless they are assisted by many out of the pale of the profession, their efforts will be powerless. They must receive from without encouragement to proceed. Unsupported by the public, they are almost as useless as are the unlearned unaided by the lawyer. Union in this matter, as in most others, is strength; and it was to effect this union that the Society for the Amendment of the Law was formed. It has now been in existence for a sufficient period to enable the Council to judge by results; and they venture to say that the Society has fulfilled the object of its formation. Much has already been effected in every branch of the law, and great objects now stand out boldly, which have either been obtained, or, by means of the further efforts of the Society, may speedily be accomplished.

"It may properly be conceded that the law in this country is, with scarcely an exception, purely administered. The character of the judges in this respect is above suspicion. The principles of the law are in the main just, although not always clear. But here all eulogy must cease. The procedure of the Courts is so ill adapted to the present necessities of society, that it is constantly productive of the greatest injustice. Causes are determined, not on their merits, but on technical points of no importance; delay the most ruinous, and expense the most enormous, constantly afflict the suitor in the pursuit of justice, until at length the legal institutions of the country, condemned by all, are the subject of general reprobation. This is a condition of things that no one would wish to see continued; and it is the object of this Society to relieve the administration of the law from the odium which now rests upon it, and introduce a system by which cheap and speedy justice may be obtained.

"With this view, the Society has not hesitated to promote the establishment, and to endeavour to extend the jurisdiction, of the County Courts. These institutions have not

only been the instruments of much good, but are destined to work a great change in the administration of the law. If all that their opponents allege against them be true, they prove that a good system of procedure, even if administered by inferior agents, is capable of producing great good. But these Courts have already established themselves in the affections of the people, by the prompt, cheap, and effective justice there administered; and the Council have gladly appointed a Committee to co-operate with their friends in both Houses of Parliament, and to consider in what manner their jurisdiction may be enlarged, as well at Law as in Equity, and generally to assist the objects for which they were established; not only will they be thus rendered more effective, but the reform of the Superior Courts must, by their means, be slowly perhaps, but certainly accomplished.

"The procedure of the Superior Courts has engaged much of the attention, first of the Common Law Committee, and next of a Special Committee appointed 'to inquire whether the principles of Law and Equity can be administered in the same Court, and by the same form of procedure.' It is quite possible, that in the course of the investigations of the Society this subject would have presented itself for consideration; but the immediate occasion for the appointment of this Committee was the visit of Mr. David Dudley Field to this country in autumn last. Previous to this it had been partially known, that in the State of New York, on the recommendation of a commission appointed for that purpose by the legislature, Law and Equity were no longer administered in distinct Courts, but that the judges were entrusted with all the remedies of both Courts to enable them to do justice to the suitors. This reform of the law the Council considered highly interesting, and they invited Mr. Field, who was one of the Commissioners, to give the Society an account of it, with which request he readily complied at a meeting on the 18th of November last. The information given on that occasion was so striking and important, that the Council thought it demanded from them the utmost care and attention. They appointed the Special Committee alluded to to consider the whole subject; but they also instituted an inquiry in America as to the operation of the New York Code. In this they were assisted by Mr. Lawrence, the ambassador from the United States, who kindly undertook to forward the questions framed by the Committee for the purpose of eliciting answers from persons the best qualified to give sound and impartial testimony. The Council have continued to receive from many sources information on this subject, and a very considerable body of most valuable evidence has been collected. The result is, that the Council now state their opinion to be, that this reform has been eminently successful. Eleven of the judges of the Superior Courts of the State of New York have expressed this sentiment,—one of them personally at a meeting of the

Society on the 14th day of April last; and although this has not been confirmed by the unanimous opinion of the legal profession of that state (which was hardly to be expected,) yet the Council believe that the large majority of the Bar of New York, as well in number as in talent and eminence, have expressed a clear and unhesitating opinion in favour of the beneficial operation of the code. To this it should be added that the public have given their concurrence; and no better proof of the popularity of the new code, or the advantages expected to be derived from it, can be given, than its adoption by many other most intelligent States of the Union in which it has been carried by acclamation. It cannot be doubted that the distinction between law and equity will not long exist in any portion of the United States. But here the Council are induced to ask a question of greater interest to the Society. How long will this distinction exist in our own country? Since the proceedings of this Society have become known, the Council have reason to suppose that in our colonial dependencies it cannot much longer endure. In the most important dependency of the Crown the Chief Justice has, in a private communication to your President, declared that he should be exceedingly glad to adopt the 'code,' which he thinks simple and practical. In another the Chief Justice, in a communication to a member of this Society, states his adherence in terms even warmer, and declares that this amalgamation of law and equity is the panacea for most of the defects in equity procedure. These opinions come from India; but the same conclusion is gaining ground in British North America, and in other portions of our colonial possessions where this anomalous distinction prevails. And even in England and Ireland the legislation of the present session has gone some way in conferring complete legal and equitable jurisdiction on the County Courts. In Scotland this distinction between law and equity never existed; and the Council, taking all this into consideration, beg to express their conviction, that it cannot long be preserved in the Superior Courts of England or Ireland; and to this they have been mainly guided by the First Report of the Special Committee of this Society, which has after great deliberation come unanimously to the resolutions, 'that justice, whether it relates to matters of legal or equitable cognisance may advantageously be administered by the same tribunal, and that all litigation, whether it relates to matters of legal or equitable cognisance, may be advantageously subjected to the same form of procedure.' The same Committee are prepared to support this resolution by the outlines of a code of procedure. In expressing their confidence in this Committee the Council beg to state their conviction that there is no instrument better adapted for the investigations requisite for legal reform than the Committees of this Society have shown themselves to be. They are not acquainted with any other machinery in this country capable of arriving at results so safely, so cheaply, and so speedily.

"The Council again express their regret that there is no department in the State charged with the due consideration and preparation of measures so important, and indeed essential, to the welfare of suitors. Commissions appointed by the Crown, have, unfortunately, a tendency to raise expectations which sometimes end in disappointment. The recommendations, based on compromise, are often feeble and unsatisfactory; and out of the little that is recommended, still less is carried into effect. The experience of the last year tends to confirm these opinions.

"The Council now proceed to ask of the Society how best it can fulfil its mission? Many of its recommendations and reports have been already adopted by the legislature, either wholly or partially, but the Council consider the time now to have arrived when the Society may, on some points, safely and advantageously apply itself more to the practical than the speculative improvement of the law. There appear to be several modes in which this may be accomplished, towards which the Council invite the co-operation of the members of the Society and the public.

"During the past year they have thought it their duty to extend the range of their operations, and to take upon themselves some of the functions of the Minister of Justice. *First*, they have been able to institute an inquiry in support of a previous report, recommending that the evidence of parties to suits should be permitted to be taken for the purpose of furthering the ends of justice. The County Court Judges readily responded to the appeal of the Council on this point, and their answers, which furnish a valuable body of evidence on the subject, have been laid before parliament, and have greatly assisted the consideration of the important bill for admitting the evidence of parties now pending in the House of Lords. *Secondly*, the subject of the Patent Laws has recently occupied much of the public attention. A Committee of this Society made a report on this subject, which formed the basis of communication with most of the Chambers of Commerce in the country. The result has been, that many public bodies, as well as individuals, have expressed their concurrence in the resolutions to which this Committee have come, and much progress has been made towards a safe and satisfactory adjustment of the whole question. The Council, indeed, are happy to state that they are now enabled to obtain important information on all subjects connected with the Amendment of the Law, not only from many parts of the United Kingdom and its Colonial possessions, but from foreign countries. As some evidence of this, the Council refers to the proceedings of the Society with respect to the New York Code. There is, however, one proposal made by the Society, in which no great progress has been made, and to which they now invite its attention. The Society, it will be remembered, last year proposed to establish a Law School. Its inaugural address was given by the President of this Society, and a

Committee was appointed to take the necessary measures for its establishment. The great difficulty which has impeded the operations of this Committee has been the want of funds; but the Council have great reason to hope that the Law School will be opened, and lectures commenced in the month of November next, the particulars of which will be duly announced.

"For the duties of lecturing, the Council have ascertained that labourers will not be found wanting, but the expense of bringing this subject properly before the public will be considerable. Nor can investigations of the nature prosecuted this year be conducted without some outlay. By a careful application of its pecuniary resources no trifling or inconsiderable results have been achieved. No time, no labour, have been grudged by those willing law reformers who have devoted themselves to the duty of serving on your Committees. But the Law School is necessarily a more costly undertaking. At all events it is the duty of the Society to provide the means for trying the experiment. The lecturer should be put to no expense. He may be willing to give his time, but no other demand should be made upon him. The Council do not hesitate, therefore, to appeal to the public for the promotion of these objects. They have hitherto asked and obtained the assistance of volunteers, they now ask the public to aid them in the promotion of these objects. If the public wishes to have the law thus rendered simple and intelligible, it must take the proper means of procuring it. The heads of the law may be slow either to perceive its necessity or to take the steps essential for success, but it has been the boast of this country that the public can do its own work, and on occasion dispense with official aid. Let us all act on this principle once more and we need not fear the result. The Council of this Society boldly declares its opinion that the time has arrived when the cause of the Amendment of the Law may best be served by going forward in this direction. Let the law be taught—let the law be simplified and brought within the reach of the community. Assist us in these points. Let us continue to conduct the inquiries necessary for the safe and complete Amendment of the Law. To the profession we say, assist us with your labour and your intelligence. To the public, assist us with your sympathy and with your purse, and before another seven years of our ministrations in this cause have passed away, England may take her rank among nations, not only for the purity of her administration of the law, but for that in which she now confessedly fails—cheap and speedy justice to all classes of the community.

"The Council have felt it their duty to point out to the public the enlarged sphere of usefulness which they believe a very moderate increase of the funds of the Society would enable it to fill: Should this appeal be responded to, the Council will gladly enter upon the arduous task of providing legal instruction; but, whether this can be done or not, the So-

ciety will still endeavour, within the narrower domain which they have hitherto occupied, to forward the cause of improvement by suggestions and investigation, awaiting with confidence the time when public opinion will recognise the necessity for teaching and simplifying the law.

LAW ASSOCIATION FOR WIDOWS, &c.

THIRTY-FOURTH REPORT.

At the Annual General Court held on the 15th May last, Augustus Warren, Esq., in the Chair, the following Report was made by the Board of Directors:—

"In making their Annual statement, the Directors have to report that the income of the Association has, in the preceding year, amounted to 1,635*l.* 5*s.* 7*d.*; and they have the gratification to announce the donations following, viz.:—21*l.* from the Master of the Rolls; 10*l.* 10*s.* from Mr. John Jaques; 5*l.* 5*s.* from the Principal of the Society of Staple Inn; 5*l.* 5*s.* from Mr. T. G. Hough; 1*l.* 1*s.* from Mr. H. P. Bird; and 1*l.* 1*s.* from Mr. W. G. Taylor. A subscription of two guineas, annual, from the widow of the late Mr. Michael Clayton, has also been noticed.

"The Members will, perhaps, be the more ready to appreciate these donations, springing as they do, purely from charitable motives.

"The Directors have the satisfaction to state that the Master of the Rolls, Lord Cranworth, and Vice-Chancellor Turner, have consented to be named Vice-Presidents of the Association, and they will accordingly be put in nomination this day.

"No new case of the Primary Class has come before the Board during the year; while on the other hand, one of the claimants has, on her marriage, voluntarily resigned all claim on the fund, with the expression of her gratitude for past assistance; in another instance, the Board, having learned that other means were forthcoming for the support of the claimant, felt bound, for the present at all events, to withdraw any further aid; and the Directors have also to report the death of a lady, who had for some years received annual assistance.

"The outlay in this branch of relief, is this year less than in the preceding, the latter having been 931*l.* 5*s.*, while the former amounts only to 825*l.*

"The following is a detailed list of the cases of the Primary Class, in which relief has been afforded during the past year, viz.:—

To the daughters of the late C. A.	— £50
— Widow of " J. A. H.	— 50
— Widow of " J. B.	— 50
— Daughters of " W. H.	— 60
— Widow of " J. J.	— 60
— Daughters of " J. E.	— 20
— Widow of " T. S.	— 60
— Widow of " T. N. W.	— 30
— Widow of " R. H.	— 40
— Widow of " G. H.	— 40

To the late daur. of the late R. F.	— £30
— Widow of J. G.	— 50
— Widow of " R. L.	— 50
— Daughters of " J. H.	— 45
— Widow of " T. D.	— 60
— Daughters of " T. S. A.	— 40
— Widow of " C. V.	— 40
— Widow of " E. B.	— 50

£825

"The sum voted at the last Annual Meeting for the benefit of the widow and families of persons who had not been, or had ceased to be, Subscribers to the Society, was 200*l.*; being 50*l.* more than the grant for the previous year; and the Directors have to state, that the cases then already on the books, and receiving fixed allowances, at once absorbed nearly the whole of this sum. Relief has been afforded to six other cases, and there is now a balance remaining of 18*l.*, which falls into the general funds of the Association.

"The Directors trust that a similar grant for the next year will relieve them from the painful necessity of rejecting applications, which they cannot but think the Subscribers in general would be willing to include among the objects of their benevolence, but which cannot receive attention if the grant be much under 200*l.*

"In one of these cases the widow has been recently elected into the almshouses of one of the public companies; and the Directors have to state that immediately upon her appointment she relinquished the benefits hitherto bestowed.

"In the early part of the current official year, the importance of making the Society more generally known, with a view to obtain an increase of funds, underwent much consideration; and a Special Committee was appointed for the furtherance of this object, who circulated an

address, accompanied by tabular statements, among the profession, to prove the value and importance of the Association, and made an earnest appeal for subscriptions.

"It is, however, with much regret that the Directors have to report, that the result of this appeal has not been so satisfactory as might have been expected, the accession of new members being only 17.

"The Directors feel satisfied that the most effective means of carrying out this very desirable object, is, for each member of the Association to exert his interest with friends in the profession, not already subscribers, and induce them to become so.

"Since the last Meeting the Directors have purchased 200*l.* 3½ per cents., thereby increasing the funded property of the Association to 10,800*l.*, 3½ per cents., and 10,200*l.*, 3 per cents. reduced.

"In conclusion, the Directors would express their conviction, that the proceedings of the past year are well calculated to impress upon the minds of the supporters of the Society a strong feeling in favour of its real and continued usefulness; and the only reward they desire for their exertions in this work of charity, is the approbation of the members at large, and their concurrent activity and zeal in promoting the interests of this truly benevolent institution.

"(By order of the Board.)

"JOHN MURRAY, *Secretary.*"

[We would suggest the expediency of authorizing the Life and Annual Subscribers to vote in the election of Pensioners. We know a society in which the income was increased from 1,000*l.* a year to 7,000*l.* a year by that change in the constitution.—ED.]

ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1851.

Queen's Bench.

[Concluded from page 461, *ante.*]

Clerks' Names and Residences.

Parker, Chas. Lewis, 41, Upper Bedford-pl., Russell-sq.
 Pattinson, R., 49, Coleshill-st., Pimlico; Hexham
 Pinninger, Hen. Wm., 1, High-st., Newington
 Butts; Westbury
 Powell, W. G., 14, Everett-st., Russell-sq.; Bath
 Prentice, Hen., 2, Bath-ter., Trinity sq.
 Prestage, John Edw., 41, Woburn-pl., Russell-sq.;
 Calthorpe-st.; Guildford-st.
 Preston, Martin Inett, 19, Arlington-st., St. John-
 street-road; Nottingham
 Preston, Wm. Rd., Ilford

Raine, Wm., Barnard Castle
 Ranson, Geo., Gloucester-st., Queen's-sq.; Sunder-
 land; 11, Chapel-st
 Reed, John Fred., 249, Strand; and Leipsic-rd.,
 Camberwell
 Renner, Chas., 32, King's-sq., Islington; Upper-
 Charles-st., Islington; Sunderland

To whom Articled, Assigned, &c.

C. Parker, Lincoln's-in-fields; C. Few, son., Hen-
 riotts-st., Covent-garden
 Wm. Kirsopp, Hexham
 Hen. Pinninger, Westbury
 Edw. King, Bath
 W. H. Johnson, Chancery-lane
 H. Bradley, 2, Harecourt-buildings, Temple
 A. Wells, Nottingham
 W. T. Prichard, 99, Newgate-st; W. S. Long,
 Cornhill
 Ralph Coulthurd, Barnard Castle
 G. S. Ranson, Sunderland
 R. Jackson, Craven-st., Strand; S. B. Jackson,
 New Inn
 Geo. Smith Ranson, Sunderland

- Richardson, Wm. Benson, York Wm. Richardson, York
- Roach, Geo. Chas., Brunswick-st., New Kent-rd.;
Merthyr Tydfil; Euston-pl. H. Simmons Coke, Neath
- Robinson, Chas. Thos., West-st., Walworth; Cam-
bridge O. R. Wilkinson, St. Neot's; W. M. Bennett, Ray-
mond-bldgs.
- Rogers, Arnold Crane, 16, Hanover-sq.; Hereford
Rushbridger, Joseph, 6, Addison-ter., Kennington Thomas Evans, Hereford
- Russell, Thos., 23, Martin's-lane, Cannon-st. J. W. Thrupp, 160, Oxford-st.
- Rymer, Thos., Exlusham, near Wrexham, Denbigh
C. Wood, Manchester; J. Res, Ditto; R. H.
Jones, Wrexham
- Sabine, Chas. Edwyn, Houghton-st.; Oswestry;
4, Little Paris-st.; Bouverie-st. C. Sabine, Oswestry, Salop
- Sargant, Edwd., Edgbaston; 44, St. John's-wood-
terrace; Harrington-sq. John Clarke Chaplin, Birmingham; John Richards,
Ditto.
- Selby, Jas. Addison, West Malling; 14, East-st.,
Queen-sq. Thos. Selby, West Malling
- Simon, Robt., Oswestry R. J. Croxon, Oswestry
- Smith, Geo. Birt, Nailaworth, Gloucester W. Smith, Nailaworth
- Smith, Herne, 10, Southampton-buildings, Chan-
cery-lane; Rugeley, Stafford J. Smith, Rugeley; P. F. Garnett, Ditto; G. R.
Hacon, Ditto.
- Snowball, Geo., Sunderland Geo. Walton Wright, Sunderland
- Spyer, Solomon, Lansdowne-pl., Brunswick-sq. Jones Spyer, Broad-street-buildings
- Stevens, Geo. Chubb, Chardstock; Guildford;
Jubilee-pl., Stepney; Guernsey E. H. Roberts, Exeter; J. Terrell, Ditto; A.
Guppy, Hoxiton
- Stoker, Wm. Coates, 26, Belitha-villas, Barnsbury-
park; Regent-sq.; Guildford-st. Shuckburgh Risley, Mecklenburgh-sq.
- Stretton, Joseph Harris, 63, Gower-st.; Leicester
Stubbs, Fred. Stanley, Solihull, Warwick Richard Luck, Leicester
- Tanner, George Nelson, 11, Essex-st., Strand;
Speenhamland Luttrell Lewin Clark, Ludlow
- Taylor, Fred. Bayne, 2, Hereford-st., Park-lane;
and Brighton John Tanner, Speenhamland
- Taylor, Thos., Brunswick-pl., City-rd.; Whick-
ham Grange; Theberton-st. G. P. Hill, Brighton
- Tennant, Jas., 56, George-street, Hampstead-rd;
Sheffield G. J. Kenmir, Gateshead
- Thistlewood, Geo. Henry, Homerton John Staniforth, Sheffield; John Jas. Wheat, Ditto
- Thomas, Arthur Franklin T., 24, Gloucester-grove,
West, Old Brompton J. Thistlewood, Lawrence-lane; W. G. Kell, Bed-
ford-row
- Thomas, Cadogan Morgan, 5, David-st., New
Kent-rd.; 10, Brunswick-st., Dover-rd. T. Clarke, Craven-st.; T. Geo. Fynmore, Ditto.
- Thompson, Edwin Sam., 15, Finsbury-pl. North;
High-st., Marylebone A. Cuthbertson, Neath; J. H. Rowland, Fenchurch-
street
- Tibbitt, Thos., Abbott, (in articles called Thos.
Abbotts Tibbitt,) 8, Adelaide-rd., Haverstock-hill
Todd, Edwin, 72, Hermitage-pl., St. John's-wood-
road; New Ormond-st. W. Rymer, Darlington; O. B. Wooler, Ditto;
R. M. Reece, Farnival's-ina
- Towle, Jas. De Lacey, 10, Staple-inn; Blackheath
Tow, Prattenton, Bewdley, Worcester Algernon Sidney Field, Leamington Priors
- Tucker, Walter Jas., Everett-st.; Chard; Ray-
mond-buildings; Lamb's Conduit-st. John Todd, Thavie's Inn
- Turner, Edw. Goldwin, 16, Woburn-sq. William M. Webster, New Boswell-court
- Turner, Hubert Fras., 12, The Terrace, Kilburn John Bury, Bewdley, Worcester
- Utterton, Edwin, Reigate Chas. Benj. Tucker, Chard
- Voules, Hen. Edmund, 4, Albert-ter., Paddington Charles Norris Wilde, 21, College-hill
- Walker, Thos., jun., Holloway; Malton; Fre-
derick-st.; Wharton-st.; New Ormond-st. William Furrner, Brighton; Geo. Mounsey Gray,
Staple Inn
- Wardell, Geo. Newby, 43, Parliament-st., West-
minster; Liverpool Messrs. Dawes and Sons, Throgmorton-st.
- Watson, John, jun., Green-st., Grosvenor-sq. Arthur J. Lane, Essex-st.; T. Clarke, Dean's-ct.,
St. Paul's-churchyard
- Waugh, Geo., jun., Worthing; 5, Great James-
st., Bedford-row Charles Walker, New Malton, York
- Webster, Fras., 6, Soley-ter., Pentonville; Kendal
Weedon, Wm., 11, York-ter., Kingsland-rd. Wm. Crawford Newby, Stockton-on-Tees
- Weekes, John Davy, 4, High-st. Bloomsbury;
Penzance J. Wadsworth, Nottingham; J. Stuart, Gray's-inn
- Wells, Wm., Upper Phillimore-pl., Kensington G. Waugh, sen., Great James-st.; R. Edmunds,
Worthing
- Wers, Fred. Murray, 1, Devonshire-pl., Kennis-
ton-rd.; Bath Eldred Harrison, Kendal
- Wheeler, Hen., Middleton, near Manchester A. S. Crowley, Swindon; J. Weedon, Reading;
W. Slcombe, Ditto
- T. Darke, Penzance; H. Cowlard, 14, Lincoln's-
Inn-Fields
- Robert Brotherson Upton, Austin Friars, London
- Thomas Whittington, Bath
- Richard Halsall, Middleton; R. B. B. Cobbett,
Manchester

Whitmore, Robert Thos., 3, Charles-st., Berkeley-sq.; 9, New-sq., Lincoln's-inn	John Eldad Walters, New-sq., Lincoln's-inn
Williamson, Robt. Reddall, 10, Hunter-st.; Aber-gavenny; 28, Henrietta-st.	Wm. Forster Pratt, Abergavenny
Willison, John Cochet, Mayfield-rd., Dalston; Bideford	Chas. Carter, jun., Bideford
Wilson, David, 27, Brunswick-pl., City Road	David Hughes, Old Jewry
Wilson, Robt. Pleydell, 5, Stanhope-st., Gloucester-gate, West; Gloucester	Robert Wilton, Gloucester; P. S. Humberston, Chester
Wing, Henry, Newark-upon-Trent; 53, Great Coram-st.	Edwin Patchit, Nottingham
Woodbridge, Charles, jun., 37, Gloucester-st., Queen's-sq.; Uxbridge	Chas. Woodbridge, Uxbridge
Worman, John Cadell, 29, Felix-terrace	Geo. Hen. Ellis, Spring-gardens
Wright, Arthur, Welford, Northampton	R. F. Welchman, Southam; T. S. Wright, Leamington Priors; G. Pell, Welford
Wylie, John Eaton M'Leod, Fir-grave-pl., Brixton	John Smale Torr, Bedford-row
Yatesman, Chas., 58, Spencer-st.; 19, Green-ter., Clerkenwell	William Smith, Wilmington-square
Young, Chas. Vernon, Folkestone; Gloucester	Robert Young, Battle; William Matthews, jun., Gloucester

Added to the List pursuant to Judge's Orders.

Boyton, Fras. Jas., 5, Cumberland-ter., Pentonville	Geo. Penfold, Croydon
Brett, John, Forest-gate	W. W. Oldershaw, Tokenhouse-yd.; W. S. Vardy, Finsbury-sq.
Ingle, Wm. Machin, Hornsey-lane; Belper	Edward Newman, Barnsley; Josiah Wilkinson, Nicholas-lane

NOTES OF THE WEEK.

LORDS JUSTICES OF APPEAL.

THE Queen has been pleased to direct Letters Patent to be passed under the Great Seal of the United Kingdom, appointing the Right Honourable Sir James Lewis Knight Bruce, and the Right Honourable Robert Monsey Lord Cranworth, to be Judges of the Court of Appeal in Chancery.—From the *London Gazette* of 10th October.

NEW MEMBER OF PARLIAMENT.

The Honourable Arthur Duncombe, for the East Riding of the county of York, in the room of Henry Broadley, Esq., deceased.

REGISTRATION OF ASSURANCES.

A letter has just been addressed to the President, Vice-President, and Council of the Incorporated Law Society, by Mr. J. E. Walters, one of its members, in which the writer has ably shown, that while it is desirable that two classes of deeds—*Marriage Settlements* and *Assignments of Reversions and Choses in Action*—should be registered, the reasons and facts brought forward in favour of the establishment of a *General Register of all Deeds* relating to land, do not justify the adoption of so sweeping a measure.

We shall take an early opportunity of noticing Mr. Walters' arguments, and in the meantime recommend his pamphlet to the careful perusal of the profession. It is published by Maxwell, 32, Bell Yard, Lincoln's Inn.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Watts v. Jefferies. July 19. Aug. 7, 1851.

STOP ORDER.—PART OF ANNUITY FALLING DUE BEFORE EXPIRATION OF SIX MONTHS FROM ORDER.—1 & 2 VICT. C. 110, s. 14.

In a case where a stop order had been obtained by a judgment creditor of an annuitant, part of the annuity fell due before the expiration of the six months from the date of the order, under the 1 & 2 Vict. c. 100, s. 14: Held, on appeal from and reversing the decision of Vice-Chancellor Knight Bruce, that the

creditor was entitled to an order to receive such portion so becoming due.

THIS was an appeal from an order of Vice-Chancellor Knight Bruce, discharging on July 5 last, a stop order which had been obtained in January by the plaintiff, who was a judgment creditor of a Mr. Alexander Taylor, for the purpose of impounding an annuity of 200*l.* payable to the debtor under this administration suit.

By s. 14 of the 1 & 2 Vict. c. 110, it is en-

Reported on another point, 41 L. O. 418.

acted, that "if any person against whom any judgment shall have been entered up in any of her Majesty's Superior Courts at Westminster, shall have any government stock, funds, or annuities" "it shall be lawful for a judge of one of the Superior Courts, on the application of any judgment creditor, to order that such stock, funds, annuities, or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor; provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order."

It appeared that one-half year's annuity was payable before the end of such six months, and a question arose whether the creditor was entitled thereto, and his Honour being of opinion he was not, this appeal had been presented.

Bacon and Smythe, in support; Solicitor-General, contra.

The Lord Chancellor said, that the application of the creditor should be granted, and allowed the appeal accordingly.

Rolls' Court.

In re Cutler's Trust. Aug. 6, 1851.

HUSBAND AND WIFE.—INSOLVENT HUSBAND. — WIFE'S EQUITY TO A SETTLEMENT.

*A petition was refused on behalf of the assignee of an insolvent, praying for payment to him of a sum of 140*l.* which belonged to the insolvent's wife, and the Court directed the whole sum to be settled on the wife.*

The doctrine laid down in Foden v. Finney, 4 Russ. 428, not followed.

THIS was a petition on behalf of the assignee of Edward Holliday, an insolvent, for payment to him out of Court of a sum of 140*l.*, which belonged to the wife of the insolvent.

Foden v. Finney, 4 Russ. 428, was cited in support.

The Master of the Rolls said, that the whole fund would be settled on the wife and refused the petition, referring to *Brett v. Greenwell*, 3 You. & Coll. Exch. 230, overruling *Foden v. Finney*.

Vice-Chancellor Knight Bruce.

Harvey v. Hubbard. Aug. 5, 1851.

WILL.—CHARITABLE REQUEST.—CONSTRUCTION.—CY PRES.

A testator by his will, bequeathed a certain portion of his estate to "the Society for Translating the Scriptures, in Middlesex." There was, however, no society of that name. The Court directed the fund to be divided between the Society for Promoting

Christian Knowledge, the Trinitarian Bible Society, and the British and Foreign Bible Society.

THE testator, Mr. Isaac Bean, by his will, dated 1849, directed all his estate to be sold and his debts and legacies to be paid thereout, and, after bequeathing his personal estate to trustees upon similar trusts, he gave charitable bequests thereout to the following among other institutions, viz.:—the Society for the Propagation of the Gospel in Foreign Parts, Pall Mall, in the county of Middlesex, the Society for Translating the Scriptures, also in Middlesex, and the Society for Promoting Christian Knowledge, in Lincoln's Inn Fields, in the county of Middlesex. There was no society called "The Society for Translating the Scriptures" in the county of Middlesex, and the Society for Promoting Christian Knowledge, the Trinitarian Bible Society, and the British and Foreign Bible Society claimed to be entitled to the fund.

Wigram, James Parker, Bacon, Baggallay, Cotton and other counsel, appeared for the respective claimants.

W. M. James for the Attorney-General.

The Vice-Chancellor directed the fund to be divided among the three societies, without leaving it to be applied under the sign manual of the Crown or a reference to the Master.

Vice-Chancellor Lord Cranworth.

In re Cooke. July 29, 1851.

HUSBAND AND WIFE.—PAYMENT OF FUND IN COURT BELONGING TO WARD, MARRIED UNDER AGE WITHOUT CONSENT OF COURT, TO HUSBAND.

The Court will in general direct a settlement to be made of the property of a ward of Court, who has married while a minor without its sanction, although with the consent of the guardians; but where it appeared from the affidavits that it would be more beneficial that the husband should receive a fund to which the wife was entitled, it was directed to be paid to him upon the petition of the husband and wife, and with the wife's consent.

THIS was a petition for payment out of Court of a sum of 227*l.* which had been paid into Court, under the 36 G. 3, c. 52, s. 31, (The Legacy Act), to the account of an infant, who had married without the sanction of the Court while a minor, although with the consent of her guardians. The petition was presented on behalf of the husband and wife, with the consent of the latter, and sought payment of the fund to the husband without any settlement.

Young, in support, on affidavits by the husband and guardians, stating it was desirable the fund should be so paid, and citing *Bennett v. Biddle*, 10 Jur. 534; *Leeds v. Barnardiston*, 4 Sim. 538.

The Vice-Chancellor, after observing, that where a ward of Court married without the consent of the Court, her property ought in

general to be settled on her,¹ said, that as it appeared from the affidavits in the present case, it would be beneficial for the wife that the fund should be paid to the husband, the order would be made as prayed.

Vice-Chancellor Turner.

Attorney-General v. Bargeses and Commonalty of Sheffield. Aug. 8, 1851.

APPOINTMENT OF CHAPLAIN TO PARISH CHURCH.—PERFORMANCE OF DUTIES.—INFORMATION.

The vicar, upon the appointment by election of the burgesses and commonalty of Sheffield, in pursuance of a charter of 1st Mary, of a chaplain to the parish church, refused to accept his services in that capacity, on the ground of certain theological differences, but there was no objection as to his personal or spiritual character, and he could not therefore preach in the church, although he performed all the other duties imposed by the charter: Held, on information, that such chaplain was entitled to receive the salary of his office, notwithstanding he could not so preach.

THIS information was filed on behalf of the Rev. George Trevor, who had been duly elected in May, 1850, one of the chaplains of the parish church of Sheffield, in accordance with the charter of 1 Mary, authorizing the appointment by election of the burgesses and commonalty of three chaplains to assist the vicar in the celebration and administration of divine services and ministries, and sacraments and sacramentals, and other things necessary to divine worship in the church and to the parishioners, for the purpose of enforcing such election. It appeared that the vicar had declined, on the ground of some theological differences, to accept the services of the relator, who had consequently been unable to preach in the church, although he had discharged the other duties of his office. The corporation had paid his salary up to Michaelmas, 1850, but no subsequent payment had been made, the defendants being doubtful whether, under the circumstances, the application of the charity fund would be authorised.

The *Solicitor-General* and *Amphlett* for the relator; *Malins* for the defendants.

The *Vice-Chancellor* said, that as the relator had been duly elected and nothing was alleged against his personal or spiritual character, he was entitled to be paid his salary whilst he performed all the duties of his office imposed by the charter, except that of preaching in the church, which he was prevented performing by the vicar.

¹ See *Ball v. Coutts*, 1 Ves. & B. 300.

Court of Queen's Bench.

Grantham Canal Company v. Ambergate, Nottingham, and Boston, and Eastern Junction Railway Company. June 9, 1851.

RAILWAY COMPANY.—PURCHASE OF SHARES IN CANAL COMPANY ON OPENING OF LINE FOR PUBLIC USE.—MANDAMUS.

Under the 9 & 10 Vict. c. clv., s. 73, a railway company was bound to purchase the shares in the Grantham Canal Company within six calendar months from "the opening of the railway between Ambergate and Grantham for public use." The company having determined not to construct, for the present, the line further than a short distance beyond Nottingham, the canal company brought their action to recover the value of the shares from the railway company: Held, on special verdict, that the action was premature and the defendants entitled to judgment, the plaintiff's course being to apply first for a mandamus to enforce the completion of the railway to Ambergate.

THIS was an action to recover the sum of 120,000*l.*, the amount of the shares in the plaintiffs' company which the defendants were bound to purchase under the 9 & 10 Vict. c. clv., the act under which the company was formed.

It appeared that the railway had been completed from Grantham to a short distance beyond Nottingham, but that the defendants had resolved to abandon for the present the construction of the remainder of the line to Ambergate.

By s. 73 of their act it was enacted, that "from and immediately after the opening of the railway between Ambergate and Grantham for public use, the company hereby incorporated shall be liable" "to pay to the committee of management for the time being of the Grantham Canal Company, for the use of the persons who at the time of the opening of the railway between Ambergate and Grantham shall be proprietors of the Grantham Canal, the sum of 160*l.* for and in lieu of each share" "within six calendar months from the opening of the railway between Ambergate and Grantham," to be, in the event of nonpayment, recoverable with interest by action in any of her Majesty's Courts of Record at Westminster.

On the trial, the cause had been turned into a special verdict for the opinion of the Court.

Peacock, Q. C., and *Pearson* for the plaintiffs; Sir *F. Kelly*, *Wheeler*, and *Willes* for the defendants.

The *Court* said, that at present the action was premature, as it could not be said the railway had been completed to Ambergate, and that the plaintiffs' remedy would be to apply for a mandamus to compel the performance of the contract to complete the line to Ambergate, upon the performance of which the defendants' liability to purchase the shares would arise. Judgment was therefore given for the defendants.

Court of Exchequer Chamber.

Ellis v. Regina. June 21, 1851.

BOND TO THE CROWN UNDER 33 HEN. 8, C. 39.—EFFECT OF SUBSEQUENT EXERCISE OF POWER OF APPOINTMENT BY OBLIGOR.

Held, on appeal from, and confirming the decision of the Court of Exchequer, that the right of the Crown to an extent upon a bond, under the 33 Hen. 8, c. 39, on all the lands of the obligor, over which he had a disposing power at the time of giving such bond, cannot be defeated by the subsequent exercise of the power of appointment.

THIS was a writ of error from the decision of the Court of Exchequer, (reported 4 Exch. R. 652). It appeared that the plaintiff in error had advanced a sum of 500*l.* to one John Mudge, who exercised a power of appointment, vested in him by indentures of lease and release, dated respectively the 15th and 16th November,

1827, to secure the repayment of such advance in favour of the plaintiff in error, by an indenture of mortgage, dated February 5, 1841. It appeared, however, that John Mudge had, on Dec. 5, 1835, become bound to the Crown by a bond, under the 33 Hen. 8, c. 39, and a writ of extent issued on April 12, 1848, under which an inquisition was held and duly filed. The plaintiff in error having pleaded the exercise of such power of appointment, the case came on before the Court below on demurrer to the plea, on the ground that the whole of the obligor's lands were bound by the bond, and was not superseded by the subsequent exercise of the power of appointment, and the Court of Exchequer having allowed the demurrer, this appeal was presented.

Greenwood, Q. C., for the plaintiff in error; *Crompton*, for the Crown, was not called on.

The Court, (per *Patteson*, *Maule*, *Cresswell*, *Wightman*, *Erle*, and *Talfourd*, JJ.), affirmed the judgment of the Court below.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

CONSTRUCTION OF WILLS.

[Continued from p. 468.]

[For the previous Sections of the Digest in this Volume, see

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Courts of Equity :

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

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Jurisdiction in Suits for Discovery, p. 347.

Law of Property and Conveyancing, pp. 366, 395.

Law of Wills, pp. 406, 426, 444.

Construction of Wills, p. 465.]

DEVISE.

1. Where a testator devised the house "wherein I now reside," and "all the remainder of my real estates whereof I am now seized," and afterwards devised "all such trust estates as are now vested in me, or, as to the leasehold premises, as shall be vested in me at the time of my death," freehold estates purchased by him between the date of his will and his death did not pass under the devise. *Cole v. Scott*, 1 H. & T. 477; 1 M'N. & G. 518.

2. Incumbrances payable out of realty, and *pari passu*.—A testator devised his real estates to A. and B., in trust to sell and pay off all incumbrances thereon, and stand possessed of

the residue "as part of his personal estate." He bequeathed his personal estate to the same persons, in trust to convert, and with the produce thereof and of the sales of his real estates to pay his debts, &c., and the legacies, and to pay the residue to whom he should give the same by codicil. He made no gift of the residue: *Held*, 1st, that the incumbrances were payable out of the real estate; 2ndly, that the debts and legacies were payable *pari passu* out of the mixed fund, composed of the produce of realty and personality; and 3rdly, that of the surplus, the part arising from realty, belonged to the heir, and that from the personality to the next of kin. *Shallcross v. Wright*, 12 Beav. 505.

3. Testator devised all his houses in Southwold to trustees in trust for his wife for life, and, after her death, in trust to convey one of them, whichever she might think proper to choose, to his daughter, Maria, and her heirs, and to convey all the other of them to his daughter, Charlotte, in fee.

Maria died in the testator's lifetime, and consequently without having chosen any one of the houses. Charlotte survived the testator.

A general demurrer to a bill filed by the testator's heir, to have all the houses conveyed to him, was overruled. *Boyce v. Boyce*, 16 Sim. 476.

See *Void Devise*.

4. Purchase of fee after devise of leasehold.—*Passing of fee*.—A testator devised all his freehold estate to B., which he purchased of C., by a will dated before, and republished by a codicil dated after, the Wills' Act; but a small piece of land purchased with the estate by the testator of C., and always held and mixed with it, was leasehold. After making the codicil, the testator purchased the fee of

that small piece of land, and the leasehold interest was merged, notwithstanding the 24th section of the Wills' Act, that the codicil did not pass the after-acquired fee. *Emuss v. Smith*, 2 De G. & S. 722.

EMBLEMMENTS.

Bequest of all live and dead stock.—Devise of real estate in the occupation of the testator, in trust for A., with a bequest of all live and dead stock, and all personal estate to B.: *Held*, that the emblements on the real estate passed to B. *Rudge v. Winnall*, 12 Beav. 357.

EXECUTORY TRUST.

Testator directed an estate to be purchased with his residuary personal estate, and made hereditary and settled upon his there constituted heir, and then to descend to his heirs, or, dying without issue, as he should then provide for. The testator then constituted his nephew, W. S., his heir and successor, and directed the estate, when purchased, to be settled on W. S., his heirs and successors in the direct male line, lawfully begotten and born in wedlock; and in case W. S. should die without issue, the estate to devolve to his brother, F. S., his heirs and successors, lawfully begotten and born in wedlock in the direct male line. The testator then declared that his object, intent, desire, and command was, *that the estate should never pass out of his family, and that no person should hold it under any other name than the one he bore of Shelton.*

The Court directed the estate to be settled on W. S. for life, with remainder to his first and other sons in tail male, with remainders to F. S. for life and to his first and other sons in tail male. *Shelton v. Watson*, 16 Sim. 543.

FAMILY.

Testator bequeathed the residus of his personal estate to trustees in trust for his wife during her widowhood, and, after her death or second marriage, in trust to be divided, share and share alike, among his five sisters and their respective families, if any.

Held, that each sister, and her children living at the testator's death, were entitled, in remainder expectant on the death or second marriage of the widow, to one-fifth of the residus, as joint tenants. *In re Parkinson's Trust, ex parte Thompson*, 1 Sim. N. S., 242.

Cases cited in the judgment: *Barnes v. Patch*, 8 Ves. 604; *Wood v. Wood*, 5 Hare, 65; *Woods v. Woods*, 1 Myl. & Cr. 401; *Beales v. Crisford*, 13 Sim. 392.

See *Procuratory Trust*.

HEIR.

See *Conversion*, 1.

HEIR-LOOMS.

1. *Custody of plate.*—As to the custody of plate left as heir-looms in the interval before any person became entitled to the possession. *Ellis v. Maxwell*, 12 Beav. 104.

2. Testator, by his will, directed that certain chattels in his mansion-house should be an-

nexed thereto and be inherited and enjoyed by the several persons who should succeed to his real estates under the limitations of his will. By a codicil, he limited his estates to certain other persons, and declared that those limitations should take effect in precedence to the limitations in his will: *Held*, that the persons entitled under the limitations in the codicil were entitled to the benefit of the direction, respecting the chattels, in the will. *Evans v. Evans*, 17 Sim. 108.

IMPLICATION.

Gift for life, with gift over on death without issue.—Pecuniary legacies were severally given to A., B., C. and D. "during their natural lives;" and in case of the demise of any of them "without legitimate issue," his proportion was to be divided amongst the survivors. A. died, leaving children. *Held*, that they did not take by implication, but that on A.'s death, his legacy fell into the residus. *Ranelagh v. Ranelagh*, 12 Beav. 200.

"IMPROVEMENTS."

A testator devised his estates, in trust, after deducting out of the rents, taxes, repairs, "improvements," &c., and "all other necessary outgoings," to divide the surplus between A. B. and other persons for life: *Held*, that an expenditure for new farm buildings, &c., not stated to be with a view of improving the rents or to secure the continuance of the old tenants, was not within the term improvements. *Wainpole v. Boughton*, 12 Beav. 622.

INTEREST ON LEGACY.

Statute of Limitations.—A testator who died in 1823, directed the trustees of his will to raise a legacy by sale of his real estates.

Held, that the legatee was not barred by the 42nd sect. of the Statute of Limitations (3 & 4 Will. 4, c. 27) from claiming interest on the legacy from the end of the first year after the testator's death. *Gough v. Bull*, 16 Sim. 323.

Cases cited in the judgment: *Ward v. Arch*, 12 Sim. 472.

INTEREST FOR LIFE.

Bequest in trust to pay interest to a testator's nephews and nieces, and his sister, in equal shares, but the share of the sister to be paid to her during her life, and after her death to her children equally, with a proviso, that, after the sister's decease, the capital should be divided among his nephews and nieces: *Held*, to give the sister a life interest in the shares of such of the nephews and nieces as were her children. *Blakelock v. Sharp*, 2 De G. & S. 484.

INVESTMENT.

Money or Stock.—A. B. bound himself to pay 16,000*l.* on the death of the survivor of himself and wife, on certain trusts, under which, on a contingency, the amount was to revert to himself. A. B., by his will, gave the 16,000*l.*, if it should revert, to trustees, on trust to pay thereout 14,000*l.* to C. and three legacies of 500*l.* each to charities, and "the remaining sum

of 300*l.*" to the Foundling Hospital. His wife survived him nine years, and the sum of 16,000*l.* was invested in 25,702*l.* three per cents. In 1948, the contingency happened, when the fund reverted, and amounted to considerably more than 16,000*l.* *Held*, that the legatees were entitled to money legacies only, and not to the whole fund. *Loscombe v. Wintingham*, 12 Beav. 46.

ISSUE MALE.

"*Living at daughter's death.*"—A testator provided, that if "his daughter should have no issue male of her body *living at her death*, or no such issue male as should be entitled, by the true meaning of that his will, to his real estates thereby limited, then and in either of those cases he devised the estates" to the daughters of his daughter living at her death: *Held*, by the Master of the Rolls and Court of Exchequer, contrary to the opinion of the Court of Queen's Bench, that the words "such issue male" were to be read "issue male of her body" simply, and not "issue male of her body *living at her death*," and that upon any failure of issue male of the daughter, her daughters took the estate. *Wilson v. Eden*, 12 Beav. 454.

JOINT-TENANCY.

1. *Survivorship.*—At the death of a testator, two sums of stock which had been purchased by him and his sister were standing in their joint names. One had been purchased by them equally, but much the greater part of the other had been purchased by the sister, who was still living.

Held, that the sister was entitled, by survivorship, to both sums. *Harris v. Fergusson*, 16 Sim. 308.

2. Testator gave all the property he possessed in the parish of K., consisting of houses, lands, debts, ready money, and other effects which he then possessed or might possess at the time of his decease, and also all his funds in the Bank of England or that of the United States of America, to his reputed children, Anthony, James, and Richard, and their heirs, share and share alike, as soon as they should have attained 21: it being his will that if one of them should die before he attained that age, his share *should vest in and belong to the survivors*. James died under 21 leaving Anthony and Richard surviving.

Held, that the share of the testator's property, which James would have been entitled to if he had attained 21, vested in Anthony and Richard as joint tenants. *Jones v. Hall*, 16 Sim. 500.

See *Next of Kin*; *Survivor*.

"LAWFUL ISSUE."

"*Children.*"—"Lawful issue" in a will *held*, upon the context, to mean "children," and that to the exclusion of "grandchildren" born prior to the period of distribution. *Edwards v. Edwards*, 12 Beav. 97.

"LEGAL REPRESENTATIVE."

1. The words "legal representative or repre-

sentatives" in a will *held* to mean, not "executors or administrators," but "next of kin." *Walker v. Marquis of Camden*, 16 Sim. 329.

2. *Reversionary bequest* to the testator's sons by name, and in case of the decease of all or any of them in the lifetime of the tenant for life, to their legal personal representatives: *Held*, to take effect in favour of their executors, and not in favour of their next of kin, although the words "executors and administrators" occurred in other parts of the will. *Hinchcliffe v. Westwood*, 2 De G. & S. 216.

LEASEHOLDS.

Enjoyment in specie.—Testator gave all his leasehold estates and all other his estate and effects to trustees, on certain trusts for the benefit of his wife and daughters and the children of the latter; and, in declaring the trusts, he used the term "rents," as well as dividends and annual proceeds; and he empowered the trustees of his will for the time being to sell his leasehold estates and to invest the proceeds on mortgage of freehold or other leasehold estates, and to lease any part or parts of his said estates.

Held, in a suit to carry the trusts of the will into execution, that the leaseholds were not to be sold. *Bowden v. Bowden*, 17 Sim. 65.

LEGACY.

1. *Severed from general estate.*—*Costs.*—Where a legacy has been severed from the general estate, and become the subject of a suit, by the result of which the estate will not be affected, the costs of the suit are borne by the fund constituting the legacy, but the appropriation or investment by the executor of a particular sum to answer the legacy, where the question which arises upon it is a question between the general estate and the legacy, does not relieve the general estate from the costs of the suit. *Attorney-General v. Lawes*, 8 Hare, 32.

2. *Residue where failure for remoteness.*—*Costs.*—The plaintiffs claiming to be residuary legatees, but failing in that claim on the ground of the remoteness of the bequest, a declaration was made of the invalidity of the trusts, and the costs of the suit were paid out of the estate. *Boreham v. Bignall*, 8 Hare, 131.

3. *Investment by executors.*—*Imbecility.*—*Payment into Court.*—*Costs.*—On account of the imbecility of an adult legatee, the executors, in proper time and *bond fide*, set apart the amount of her legacy, and, after payment of the legacy duty and incidental expenses, invested the balance in consols, in their own names, and accumulated the dividends, (the 36 Geo. 3, c. 52, not applying to the case,) and did not, on the passing of the 10 & 11 Vict. c. 96, transfer the amount into Court, under that act. A bill was filed in 1846, for the payment of the legacy in cash, with interest. But the Court refused to disturb the investment, and directed it and its accumulations to be brought into Court. It appearing, however, that the legatee was of imbecile mind at the date of the

testator's will, the Court, on that ground, gave the costs out of the testator's general estate. *Pothecary v. Pothecary*, 2 De G. & S. 738.

See *Children*, 2; *Conversion*, 1.

MANSION-HOUSE.

Testator directed that a mansion-house with suitable offices, fit for the residence of the owner of his estates (which were worth 15,000*l.* a year) should be erected by his trustees.

Held, that the mansion-house ought to have a garden, and lawns and pleasure-grounds attached to it, and proper approaches made to it. *Lombe v. Stoughton*, 17 Sim. 74.

MARRIED WOMAN.

A married woman having power to dispose of a fund by will, made a will disposing of that fund, and also of another fund over which she had no power, and appointed her husband her executor, and he proved her will generally.

Held that, as to the latter fund, the will was valid as being made *ex assensu viri*. *Ex parte Fane*, 16 Sim. 406.

See *Restraint of Anticipation*.

MINES.

Devise of lands to one and monies to another.—Devise (before the Statute of Wills, 7 W. 4, and 1 Vict. c. 26,) of lands to certain persons, and of pits and veins of clay under the same lands to other persons,—the latter devise passed only the pits and veins of clay open at the date of the will, *semble*.

Whether since the statute, such a devise would pass pits or veins open at the death of the testator, *quære*. *Brown v. Whiteway*, 8 Hare, 150.

MORTGAGED ESTATES.

Exoneration out of personally.—A testator having mortgaged an estate for 1,500*l.*, for payment of which his eldest son was surety to the mortgagee, devised the estate to his eldest son in tail, with remainders over, under which the plaintiff became tenant in tail. The testator devised another estate to trustees, upon trust to sell, and out of the proceeds to pay his mortgage and other debts, and gave the residue to his eldest son, whom he appointed executor and residuary legatee.

The trustees did not act, but the son entered into possession of all the testator's estates and property. The mortgage was transferred, the son entering into a new covenant for payment of the 1,500*l.*, and interest at a different rate, with a new proviso for redemption; and he covenanted for payment of the 1,500*l.* and interest accordingly. The son having died, *held*, that the plaintiff was entitled to have the entailed estate exonered from the mortgage out of the son's personal estate. *Bruce v. Morice*, 2 De G. & S. 389.

See *Administration of Assets*.

NEPHEW'S SECOND WIFE.

Annuity.—A bequest of annuity to the testator's nephew for life, or until his bankruptcy or insolvency, and after his decease, bankruptcy, or insolvency, to be paid to his wife for

the personal support of herself, her husband, and his children, during the life of his nephew and his wife and the survivor of them; and in case they or either of them should attempt to alienate the annuity, the trustees to be empowered to apply it towards the support of their children. The first wife of the nephew, to whom he was married before the date of the will, survived the testator, and the gift of the annuity was *held* not to extend to the widow of the nephew who was his second wife. *Boreham v. Bignall*, 8 Hare, 131.

NEXT OF KIN.

Legal personal representatives.—*Joint tenants*.—A testatrix having three daughters, gave one-third to each for life, with remainder to their children respectively, with cross-remainders between them, with an ultimate limitation to her own "next of kin and legal personal representatives." *Held*, that the class of next of kin was to be ascertained at the death of the testatrix, and that they took as joint tenants. *Baker v. Gibson*, 12 Beav. 101.

PARENT AND CHILD.

1. Testator gave all his property to trustees, in trust to pay an annuity to his wife, and, subject to that payment, to convey, assign, or transfer all his property unto and equally between his children, when and as they severally attained 21; and, in the meantime, to pay to his wife, or otherwise apply the rents and proceeds of their respective shares for or towards their respective maintenance, education, and advancement. But in case of the decease of any of the children under 21, then upon trust to convey, assign, or transfer the shares of such of them as should so die, and the accumulations, if any, unto and equally between such of them as should attain 21. The testator's widow maintained and educated the children for several years, and advanced three of them out of the income received by her from the testator's property, exclusive of her annuity; and, the income being more than sufficient for those purposes, a considerable surplus remained in her hands: *Held*, that the surplus belonged, not to the children, but to the widow. *Browne v. Paull*, 1 Sim., N. S., 92; *Hoggins v. Same*, ib. 92.

Cases cited in the judgment: *Hadow v. Hadow*, 9 Sim. 438; *Berkeley v. Swinburne*, 6 Sim. 613; *Raikes v. Ward*, 1 Hare, 445.

2. *Exoneration of devised lands*.—A testator mortgaged a mine as a collateral security for a debt of two of his sons, and took from them a bond as counter security. He afterwards devised the mine to one of his sons, and directed his executors to pay out of his residuary estate his debts, and particularly the sums charged on the mine: *Held*, that thereby the testator intended to give to the two sons the amount of the mortgage debt. *Musket v. Cliffe*, 2 De G. & S. 243.

[To be concluded in our next Number.]

The Legal Observer,

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SATURDAY, OCTOBER 25, 1851.  
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EXPENSES OF PROSECUTIONS' ACT.

AMONGST the most important of the measures introduced by the government during the last Session, with reference to the administration of Justice, is the act (14 & 15 Vict. c. 55,) brought into parliament by Sir George Grey, "to amend the law relating to the expenses of prosecutions, and to make further provision for the apprehension and trial of offenders."

That those whose attendance or assistance is necessary for the effectual prosecution of public offenders, should be indemnified by the public against pecuniary loss whilst engaged in the discharge of what may generally be expected to turn out a disagreeable duty, seems tolerably manifest. Yet the principle appears to have been hesitatingly, partially, and grudgingly conceded by the legislature. The act now under consideration (which is printed *in extenso* at page 415) is an advance in the right direction, and puts an end to some startling anomalies, but it falls short of a recognition of the principle above adverted to in some remarkable particulars.

As many of our readers are aware, up to a comparatively recent period, the law provided no means for reimbursing the prosecutor and witnesses on criminal prosecutions. In cases of felony, certain provisions, however, were made for that purpose by the act 27 Geo. 2, c. 3, followed, after a considerable interval, by the 18 Geo. 3, c. 19, and the 58 Geo. 3, c. 70; and more recently by the 7 Geo. 4, c. 64, which repealed the former statutes and enacted, that the Court before which any person was prosecuted or tried for felony, may order payment to the prosecutor and witnesses for the prosecution, for the expenses they severally incurred in attending before the

examining Magistrate and Grand Jury, and in otherwise carrying on the prosecution, and also to compensate them for their trouble and loss of time therein. This act placed the payment of expenses, in cases of prosecutions for *felony*, upon a satisfactory footing. The legislature, however, adopted the distinction, which does not appear to have been founded upon any very intelligible principle, between those offences which are known as felonies and those called misdemeanours, and the question, whether the prosecutor and his witnesses were entitled to their expenses, constantly turned upon the fact, whether the subject of indictment was what the law defined to be a felony or only a misdemeanour. Although the prosecution might have been attended with unquestionable public benefit, conducted with unexceptionable propriety, and instituted by persons whose circumstances rendered it inconvenient and unreasonable that they should incur any expense for such a purpose, if the offence was what the law defined to be a *misdemeanour*, the Court in which the trial took place was without authority to order payment of the expenses of the prosecution.

The law, in this respect, was, to some extent, amended by the stat. 7 G. 4, c. 64, s. 23, which, after reciting—that for want of power in the Court to order payment of the expenses of any prosecution for a misdemeanour, individuals were deterred, by the expense, from prosecuting in such cases, enacted—that the costs and expenses of prosecutors and witnesses may be allowed by the Courts where any person is indicted for an assault with intent to commit felony, or for any attempt to commit felony, for riot, receiving stolen property knowing it to be stolen, assaulting an officer in the execution of his duty, a conspiracy to raise wages, obtaining property by false pretences, wilful and indecent

exposure of the person, wilful and corrupt perjury and subornation of perjury. A proviso, however, was added to this section, declaring that upon indictments for misdemeanour, the Courts should not have power to order the payment of expenses and compensation for attending before magistrates.

Thus the law stood until the last Session of Parliament, when, by the act already referred to, (14 & 15 Vict. c. 55,) the power of allowing the expenses of prosecution and for the attendance of witnesses was extended to the following cases of misdemeanour,—viz., “unlawfully and carnally knowing and abusing any girl being above the age of 10 and under the age of 12 years; unlawfully taking or causing to be taken any unmarried girl, being under the age of 16 years, out of the possession and against the will of her father and mother, or of any other person having the lawful care or charge of her; conspiring to charge any person with, or to indict any person of, a felony; and conspiring to commit any felony.” The proviso to the 23rd sect. of the 7 Geo. 4, c. 64, is also repealed, so that the costs of indictments in the cases of misdemeanour enumerated in that section are placed on the same footing as the costs of prosecutions for felony.

In our poor judgment, it would have been wiser and more expedient that the power of allowing expenses in *all* cases of misdemeanour, should be at once granted to the Courts of Criminal Jurisdiction, to be exercised at their discretion. Surely, the fact that such a discretion existed would be a sufficient guarantee that the expenses of prosecutors and witnesses would not be improperly allowed. A tribunal that could not safely be trusted with such a power, ought not to have the cognizance of criminal cases.

An absurd anomaly was created by the act 9 Geo. 4, c. 31, s. 25, with respect to the costs and expenses of prosecutors and witnesses, in cases where there is a charge of assault with attempt to commit a felony. In such cases, magistrates are directed, when they consider the case of sufficient gravity to form a fit subject for indictment, to refrain from adjudicating upon it summarily, and bind over the prosecutor and witnesses to attend at the next Sessions or Assizes. In such cases, although the magistrates had power to allow the expenses, if the case was of a nature which enabled them to deal with it summarily, there was no power any where to allow the expenses, either of attending before the magistrate or

at the trial, when the charge was of so serious a nature as to induce the magistrate to believe it ought to be investigated and dealt with by a superior tribunal. This manifest absurdity and injustice is put an end to by the Act of last Session.

The act revokes the authority conferred on the Justices in Quarter Sessions to make general regulations as to the allowance of costs and expenses, and empowers the Secretary of State, in future, to make regulations as to the scales of payment of costs, expenses, and compensations to be allowed to prosecutors, witnesses, and others, in cases of criminal prosecution, which regulations are to be binding on all Courts. Power, however, is reserved to the Courts to order payment to any person who may have shown “*extraordinary* courage, diligence, or exertion” in the apprehension of any offender; and the Courts of Sessions are in future to have power, in the same manner as other Courts, to order compensation, not exceeding 5*l.*, to any person active in the apprehension of offenders tried by such Courts.

The act, after reciting that it may be expedient to authorise the payment of Clerks of the Peace, and other clerks therein mentioned, by *salaries instead of fees*, contains a variety of provisions for carrying out that object, which extend through several sections.

An alteration of some practical importance, as regards the administration of criminal justice, in the metropolis and the adjoining counties is effected by this act. The Central Criminal Court Act, (4 & 5 Will. 4, c. 36,) directed, that the Justices of the Peace acting in and for the Cities of London and Westminster, the Borough of Southwark, and the Counties of Middlesex, Essex, Kent, and Surrey, should not at their respective General or Quarter Sessions of the Peace, or any adjournment thereof, try any of the offences therein mentioned, when alleged to be committed within the limits of that act. This restrictive provision is now repealed, and various enactments substituted, from which it would appear that the framers of the act anticipated, what the experience of the last month has in some degree proved, that the business of the Central Criminal Court would be considerably diminished, and the number of cases tried at the Middlesex and Westminster Sessions, as well as the Sessions for Essex, Kent, and Surrey, proportionally increased. Now, the expediency of transferring any portion of the business transacted at the

Central Criminal Court to the Sessions, appears to be at the least questionable? There are ten Sittings of the Central Criminal Court holden annually, they are presided over by the Judges of the Superior Courts of Law, or by the Recorder of London and the Common Serjeant, who have usually been, and now are, lawyers of great eminence and experience, and the Court is attended by an able and numerous Bar, who have applied themselves especially to the conduct and defence of criminal cases. The Central Criminal Court, therefore, not only clears the goals of the metropolis ten times in every year of the prisoners waiting for trial, but it serves as a model Criminal Court for the entire kingdom, and in that respect its establishment on its present footing is a public benefit the value of which can hardly be exaggerated. It would have been satisfactory, therefore, if the Secretary for the Home Department had publicly stated the grounds upon which he proposed a change, calculated certainly to diminish the importance and utility of a tribunal which has generally been considered to have fully realised the purposes for which it was created. The late act repeals so much of the Statute 7 & 8 Vict. as requires that any person appointed a deputy to the Assistant Judge who presides at the Middlesex Sessions, shall be in the Commission of the Peace for the county, and directs that any person, "being a Serjeant or Barrister-at-Law of ten years' standing," may be appointed such deputy. From this provision, we apprehend that the necessity of appointing a deputy to Mr. Serjeant Adams, the present Assistant Judge is contemplated.

The concluding sections of the act relate to the committal, custody, removal, and detention of prisoners, and may be regarded rather in the light of administrative regulations, than as substantial alterations of the law.

PRACTICE IN BANKRUPTCY.

TRADER DEBTORS' SUMMONS.

DURING the vacation months, the only Court sitting continuously in the metropolis, has been the Court of Bankruptcy, and although the number of persons absolutely adjudicated bankrupt, during those months, has not equalled the usual average, the preliminary proceeding of summoning, in order to compel the commission of an act of bankruptcy, is of frequent occurrence.

It is known to every lawyer, that by the provisions of the Bankrupt Laws, any per-

son who is a trader, and alleged to owe money, is liable to be summoned before a Commissioner of Bankrupts, who is authorized, at this stage, to require the party summoned either to admit the debt, or deny—upon oath—that he owes it, and upon such denial the Commissioner may require the debtor to enter into a bond with two sureties to pay the sum recovered, with costs, in any action brought for the sum demanded.¹

If the debtor does not attend the summons, or does not depose to a good defence and enter into a bond with security when required, he is deemed to have committed an act of bankruptcy upon the eighth day after service of the summons, provided a petition for adjudication of bankruptcy be filed against such trader within two months: on the other hand, if the debtor appears to the summons and files an admission of the demand, but neglects to pay, or secure the debt to the satisfaction of the creditor, an act of bankruptcy is committed on the eighth day from the filing of the petition, provided also, that a petition for adjudication of bankruptcy be filed against such trader within two months.² In all cases where a trader is summoned, the Court has power to order either that the creditor, or the trader debtor, should have costs, or to direct that the costs incident to, or attendant upon, the summons, should abide the event of any action brought or to be brought for the recovery of the demand, in which latter case the costs are costs in the cause, for which judgment may be signed and execution issue.³

That the course of proceeding thus pointed out by the Bankrupt Laws should be in favour with creditors, is not to be wondered at, and it has of late been so constantly resorted to, that the practice has become a matter of some importance.

The first step to be taken by a creditor, who is desirous of proceeding under the provisions above indicated, is the delivery to the debtor personally, or to some adult inmate at his last known place of abode or business, of an account in writing of the particulars of demand, with a notice requiring immediate payment. The creditor must then file, in the Court of Bankruptcy in the district in which the debtor resides, an affidavit of the truth of his debt, that he verily believes the debtor to be a trader within the meaning of the Bankrupt Laws, and that he has caused the particulars of demand (a

¹ 12 & 13 Vict. c. 106, ss. 78, 79 and 80.

² Sect. 81.

³ Sect. 85.

copy of which is to be annexed to the affidavit) to be delivered to the debtor, personally or otherwise. A summons is then issued by the Court in which the affidavit is filed, calling upon the debtor to appear before the Court, and stating the purpose for which he is called upon to appear.

The process required by the Bankruptcy Law Consolidation Act, therefore, to bring the trader debtor into Court, for the purpose of calling on him to admit or deny the alleged debt, consists of three distinct parts.

1st. The particulars of demand with notice requiring immediate payment, delivered to the debtor.

2ndly. The affidavit of debt with copy of particulars of demand annexed, filed in the Court, and

3rdly. The summons issued by the Court, and served on the debtor.

The act of parliament (12 & 13 Vict. c. 106, s. 78.) expressly provides, that the particulars of demand, affidavit of debt, and summons to the trader debtor respectively, shall be in specified forms, contained in the Schedules F., G. and H. respectively, annexed to the act. Upon referring to those forms it will be found that they are simple, intelligible, and sufficiently complete. It might be supposed, therefore, that no serious difficulty would present itself to the practitioner in pursuing or filling up the forms specified by the act of parliament. In practice, however, very considerable difficulty is found, and scarcely a day passes, in which summonses against debtors are not dismissed by the Court of Bankruptcy, and the proceedings on which summonses are founded rendered inoperative, by reason of some suggested defect in one or more of the forms prescribed by the act of parliament! A result so unsatisfactory and mortifying to the practitioner by whom, or under whose direction, the forms are prepared, is thus accounted for. The practice of summoning a trader debtor to the Court of Bankruptcy, as above described, was originally established under the provisions of the act 5 & 6 Vict. c. 122, and specified forms of the particulars of demand, affidavit of debt, and summons were prescribed by that act, which do not vary in any material particular from the forms contained in Schedules F., G. and H. of the Bankrupt Law Consolidation Act. Under the 5 & 6 Vict. c. 122, s. 70, the Commissioners were authorized, with the sanction of the Lord Chancellor, to make general rules, for regulating the practice, and forms of proceedings *where not provided for by the act.* In

supposed pursuance of this power, an extensive body of General Rules and Orders were made, which bear date the 12th November, 1842; and by which, not only the general practice of the Courts, but also the forms of proceeding provided by the act, were materially modified and regulated. The question, whether the Commissioners by those rules exceeded the powers given to them by the 70th section of the act of parliament, although frequently suggested, has never, it is believed, been brought before any competent tribunal for decision, and the rules, made under the 5 & 6 Vict. c. 122, remained in force until the 11th October, 1849, when the Bankrupt Law Consolidation Act took effect. The act last mentioned, repealed all that is material to this question of the 5 & 6 Vict. c. 122, and as already stated, prescribed the forms to be used in reference to the summoning of a trader debtor. Under the Bankrupt Law Consolidation Act, as under the previous act of the 5 & 6 Vict., the Commissioners, with the approval of the Chancellor, have power to make rules "for regulating the practice of the Court, and the forms of proceedings where not provided for by *that act.*"⁴ The only rule hitherto promulgated by the Commissioners, under that act, is dated the 12th Oct. 1849, and as material to the subject under consideration, it is subjoined. By this rule, it will be observed, that all rules and orders in force at the time the Bankrupt Law Consolidation Act came into operation, for regulating the practice of the Court and the forms of proceeding, where not provided for by the said act, are continued "so far as such rules and orders are applicable to such purposes and not inconsistent with any of the provisions of the said act."

The question constantly raised before the Commissioners is, whether the Rules of November, 1842, made under the repealed act, 5 & 6 Vict. c. 122, are applicable to the forms of particulars of demand, affidavit of debt, and summons specified in the Schedules F., G. and H. of the Bankrupt Law Consolidation Act? Upon this question, not only have the decisions of the Commissioners of Bankrupts differed, but some instances have been communicated to us, where the same Commissioner has, no doubt upon more mature consideration, thought proper to alter the view he had in the first instance judicially taken upon this often mooted subject.

The precise terms of the General Rules

⁴ Sect. 8. 12 & 13 Vict. c. 106.

of November, 1842, upon which the Commissioners have been called upon to decide, shall be brought under the consideration of our readers in an early number. At present, space only permits us to add, that as more than one of the Commissioners have decided, that the Rules of November, 1842, are still in force and applicable to the process required for summoning a trader debtor, and no decision, we have heard of, has gone so far as to determine that adherence to these rules would be irregular and invalidate the proceeding, the safer and more prudent course will be, to frame the particulars of demand, affidavit of debt, and summons, in accordance with the rules, until the matter has been definitively and authoritatively determined.

GENERAL ORDER UNDER THE BANKRUPT LAW CONSOLIDATION ACT, 1849.

That the several Rules and Orders in or relating to matters of bankruptcy, or to the official assignees, or other officers in bankruptcy, or to the forms of proceedings, or the practice to be observed in the Court of Bankruptcy, and being in force at or immediately preceding the commencement of the Bankruptcy Law Consolidation Act, 1849, shall, from and after the commencement of such act, and until further order, be the Rules and Orders under the same act, for the better carrying the said act into execution; and as regards the duties to be performed by the chief and other registrars, the accountant, master, clerk of enrolments, official assignees, registrar of meetings, and clerks, and by the messengers, ushers, and other under officers of the Court of Bankruptcy; and generally for regulating the practice of the Court, and the forms of proceedings, where not provided for in the said act, so far as such Rules and Orders are applicable to such purposes, and not inconsistent with any of the provisions of the said act; and that, subject to such restrictions, the said Rules and Orders shall extend and apply, not only to commissions and fiats in bankruptcy, but to petitions for adjudication of bankruptcy, and the proceedings thereunder respectively, and generally to all matters provided for by the said act. [Dated 12th October, 1849. Signed by Eight Commissioners, and approved by Lord Cottenham, as Chancellor.]

NOTES ON EQUITY PRACTICE.

AMENDMENT OF BILL.—STATEMENTS NECESSARY IN AFFIDAVIT IN SUPPORT.

In the recent case of *Stuart v. Lloyd*, decided on Jan. 11 last, and reported in 3 M.N. & Gord., p. 181, the Lord Chancellor held, that a plaintiff, who applies for leave to amend under the 68th Order of May 8,

1845, must not only swear that the proposed amendments are material and could not with reasonable diligence have been sooner introduced into the bill, but he must also show the materiality of the amendments by bringing them before the Court, and must state facts so as to enable the Court to judge of the truth of his deposition on the point of reasonable diligence.

The Lord Chancellor, in his judgment, after observing that this was the first time the point had been brought before the Court, said—

“All orders framed for the prevention of delay ought to be strictly construed, so as not to defeat their object by the introduction of little distinctions depending on particular facts; and such was the object of the orders, the 68th of which applies to the present case.”

His Lordship, in reference to the construction of the 68th Order, observes—

“I think, considering the object of the order and who framed it, new terms would not have been used in it, except for the purpose of introducing new duties, for every one knows the importance of adhering to words which have already received a judicial interpretation. The words of the old order were, ‘the Court being satisfied; those of the new are, ‘affidavit showing.’ I think it is impossible to say that that is *shown* which is merely alleged in general terms, or that the fact that reasonable diligence has been used, can be said to be *shown* by the party affirming it in his affidavit.”

“A plaintiff is not entitled to amend unless he sets forth such matter as to enable the judge, either the Master or the Court, as the case may be, to judge of the case. The order imposes two things on the plaintiff. He knows what the Court cannot know, and is therefore required to pledge his oath that the amendments proposed are material, and he must show this by bringing them before the Court. He must also swear that he has used reasonable diligence; and as this is a matter of opinion, the Court requires him to set forth what he has done, so that it may test the accuracy of the conclusion to which he deposes.”

¹ By which it is ordered, that “after the plaintiff has filed or undertaken to file a replication, or after the expiration of four weeks from the time when the answer or last answer is deemed sufficient, a special order for leave to amend a bill is not to be granted without further *affidavit showing* that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into such bill.”

² 15th Order of 3rd April, 1828.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

COPYHOLD, TYTHE, AND INCLOSURE COMMISSIONS.

14 & 15 VICT. c. 53.

So much of 4 & 5 Vict. c. 35, as authorizes the appointment of Commissioners, &c. continued for two years. Salary of a Commissioner not to exceed 1,500*l.*; s. 1.

Commissioners to come in the place of Copyhold and Inclosure Commissioners, and to complete proceedings under Tithe Acts, and to exercise all other powers now vested in Copyhold, &c. Commissioners; s. 2.

As to continuance of secretary and officers; s. 3.

Appointments and powers of Assistant Commissioners continued; s. 4.

Appointments under this act limited to two years; s. 5.

Provisions applicable to Copyhold, &c. Commissioners applicable to this act; s. 6.

Powers of Assistant Commissioners appointed by Tithe, Copyhold, or Inclosure Commissioners vested in Assistant Commissioners appointed or continued under this act; s. 7.

Matters commenced by Tithe Commissioners, &c. to be completed by Commissioners under this act; s. 8.

Extending powers of 8 & 9 Vict. c. 18, to authorising reservation of easements for working mines; s. 9.

The clauses of the act are as follow:—

An Act to consolidate and continue the Copyhold and Inclosure Commissions, and to provide for the Completion of Proceedings under the Tithe Commutation Acts.

[1st August, 1851.]

Whereas the appointments of the Tithe Commissioners for England and Wales, and the other appointments and powers of appointment under the act of the Session holden in the 5 & 7 W. 4, c. 71, and the acts continuing and amending the same, will expire at the end of the present Session of Parliament; but certain proceedings for the commutation of tithes under the said acts have not been completed, and other powers and duties under such acts have not been fully executed and performed: and whereas by the act of the Session holden in the 4 & 5 Vict. c. 35, the said Tithe Commissioners for the time being were appointed to be "the Copyhold Commissioners" for carrying that act into execution, and should the same not be fully carried into effect before the duties of the said Tithe Commissioners should cease, one of her Majesty's Principal Secretaries of State was empowered to appoint any number of fit persons, not exceeding three, to be such Copyhold Commissioners: And whereas by the act of the Session holden in

the 8 & 9 Vict. c. 118, provision was made for the appointment of two persons, who, with the First Commissioner of her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, were to be the Commissioners for carrying that act into execution, and were to be styled "The Inclosure Commissioners for England and Wales:" And whereas the said acts relating to the said Copyhold and Inclosure Commissioners have been amended by other acts: And whereas under an act of the Session holden in the 9 & 10 Vict. c. 101, and other acts relating to the drainage of lands in Great Britain, certain powers and duties are vested in the said Inclosure Commissioners in relation to such drainage: And whereas the appointments and powers of appointment of the said Copyhold Commissioners and Inclosure Commissioners, and of their Assistant Commissioners, secretaries, and other officers, will expire at the end of the present Session of Parliament: And whereas it is expedient to continue for the period hereinafter mentioned, and subject as herein provided, the powers of appointment contained in the said act of the 4 & 5 Vict., and to transfer to the Commissioners to be appointed thereunder the duties and powers of the said Inclosure Commissioners, and to provide for the completion of the proceedings for the commutation of tithes which have not been completed, and for the exercise and performance of such of the powers and duties of the said Tithe Commissioners as remain to be exercised or performed: Be it therefore enacted as follows:

1. So much of the said act of the 4 & 5 Vict. as authorizes the appointment of Commissioners and other officers as therein mentioned shall be continued for two years next after the day of the passing of this act, and thenceforth until the end of the then next Session of Parliament; and the powers of appointment so continued shall be construed as authorising such appointments as aforesaid, for all the purposes of this act: Provided always, that the salary of any Commissioner to be appointed under the power hereby continued shall not exceed 1,500*l.*

2. The Commissioners to be appointed as aforesaid shall be Commissioners for executing the said acts of the 4 & 5 and the 8 & 9 Vict., and the acts amending, explaining, and extending the same, and the Acts relating to the Drainage of Lands in Great Britain, in the place of the said Copyhold Commissioners and Inclosure Commissioners respectively, and all the powers and duties of the said Tithe Commissioners which at the end of the present Session of Parliament are not fully exercised and performed, shall by virtue of this act be transferred to and become vested in the Commissioners appointed under this act, and where under any act of parliament any powers or duties are or may be vested in or to be performed by the said Copyhold Commissioners, Inclosure Commissioners, or Tithe Commissioners, or any or either of such Commissioners, all such powers and duties shall be vested in and performed by the

said Commissioners to be appointed as aforesaid; and the Commissioners appointed under this act shall, in all proceedings in the exercise and performance of the powers and duties to be exercised and performed by them under this act, in the place of the said Copyhold Commissioners, Inclosure Commissioners, or Tithe Commissioners, adopt and use the style and seal of the Commissioners in whose place they come under this act in respect of such powers and duties.

3. It shall be lawful for the Commissioners of her Majesty's Treasury to direct that such of the secretaries, assistant secretaries, clerks, and officers employed under the said Tithe Commissioners, Copyhold Commissioners, and Inclosure Commissioners respectively as the said Commissioners of the Treasury shall think necessary be continued so long as such Commissioners may think fit, under and for the purposes of this act; and all such officers may be removed as if they had been appointed under the powers hereby continued; and no assistant Commissioner, secretary, or other officer shall be appointed by the Commissioners appointed under this act without the consent of the said Commissioners of her Majesty's Treasury.

4. All appointments and powers of assistant Commissioners under the said acts or any of them which may be in force immediately before the end of the present Session of Parliament shall respectively continue in force until revoked by the Commissioners appointed under this act, subject, nevertheless, to the provision next hereinafter contained.

5. No Commissioner or assistant Commissioner, secretary, or other officer or person appointed or continued under this act, shall hold his office for a longer period than two years next after the day of the passing of this act, and thenceforth until the end of the then next Session of Parliament; and after the expiration of the said period of two years and of the then next Session of Parliament so much of this act as authorizes any such appointment shall cease.

6. Save as herein provided, all provisions of any acts applicable to the said Copyhold Commissioners, Inclosure Commissioners, and Tithe Commissioners respectively shall be applicable in like manner to the Commissioners under this act.

7. Where, under the said acts of the 6 & 7 W. 4, and the 4 & 5 and the 8 & 9 Vict., and the acts amending, explaining, and extending the same respectively, or any of such acts, or any other acts of parliament, powers and duties are vested in or to be performed by an Assistant Commissioner appointed by or under the said Tithe Commissioners, Copyhold Commissioners, or Inclosure Commissioners, such powers and duties shall and may be exercised and performed by an assistant Commissioner appointed or continued under this act; and all provisions having reference to any assistant Commissioner appointed by the said Tithe Commissioners, Copyhold Commissioners, or Inclosure Commissioners shall be construed

as having reference to an assistant Commissioner appointed or continued under this act.

8. All acts, matters, and things commenced by or under the authority of the said Copyhold Commissioners, Inclosure Commissioners, or Tithe Commissioners shall and may be carried on and completed by or under the authority of the said Commissioners appointed under this act; and such Commissioners, for the purpose of prosecuting or defending and carrying on all actions, suits, or proceedings pending at the time of the first appointment of Commissioners under this act, shall come into the place of such Copyhold Commissioners, Inclosure Commissioners, or Tithe Commissioners respectively.

9. And whereas it is expedient that the powers of the said act of the 8 & 9 Vict., and the acts amending the same, should be extended to authorize the reservation of easements for working mines of the lord of a manor (whose consent may be required to an Inclosure), although such mines may not be under the lands to be inclosed: Be it therefore enacted, That in the provisional order of the Commissioners concerning the inclosure under the provisions of the said acts of any waste lands of any manor it shall be lawful for the Commissioners to require, and in their provisional order to specify, as one of the terms and conditions of such inclosure, the reservation to the lord of the manor, his heirs, successors, and assigns, of rights of way and other easements over the lands intended to be inclosed, for working and carrying away any mines, minerals, stone, and other substrata the property of the lord of the manor, not under the lands proposed to be inclosed, and whether within the manor or not within the manor, and also for working and carrying away any mines, minerals, stone, and other substrata which may be intended to be reserved to or remain the property of the lord of the manor under the lands proposed to be inclosed, or for any of the purposes aforesaid: and in case it shall have been so declared in such provisional order; then the valuer shall and may reserve and award to the lord of the manor, his heirs, successors, and assigns, such liberty to construct railways, waggon-ways, and roads, and such rights of way and other easements over the lands intended to be inclosed, for working and carrying away any such mines, minerals, stone, or other substrata, the property of the lord of the manor as aforesaid, as by the valuer, with the approbation of the Commissioners, shall be thought reasonable, and as shall not be inconsistent with the terms of such provisional order; subject to such provisions for compensation for damage to be done to the surface in the exercise and enjoyment of such rights and easements as to the valuer, with such approbation as aforesaid, shall be thought reasonable.

LOCAL ACTS.

14 & 15 VICT. c. 49.

Recited act repealed ; s. 1.

Where works proposed on tidal lands, admiralty may require statements, &c. ; s. 2.

Admiralty may appoint inspectors ; s. 3.

Inspectors may summon witnesses and examine them upon oath ; s. 4.

Penalty for non-attendance or refusing to answer questions ; s. 5.

Admiralty may take security for payment of expenses of inquiry ; s. 6.

Petitioners for private bill to be deemed the promoters ; s. 7.

Form of citing the act ; s. 8.

The clauses of the act are as follow :—

An Act to repeal an Act of the Eleventh and Twelfth Years of her present Majesty, for making preliminary Inquiries in certain Cases of Applications for Local Acts, and to make other Provisions in lieu thereof.

[1st August, 1851.]

Whereas an act was passed in the Session of Parliament holden in the 11 & 12 Vict. c. 129 : And whereas it is expedient to repeal the said act, and to make other provisions in lieu thereof : Be it therefore enacted,—

1. That in respect of all future applications to parliament for local acts the said recited act shall be and the same is hereby repealed.

2. Whenever application shall be made to parliament for a bill whereby power is sought to construct any works on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, or to construct any bridge, viaduct, or other work across any creek, bay, arm of the sea, or navigable river, or to construct any work affecting the navigation of any harbour, port, tidal water, or navigable river, it shall be lawful for the Lord High Admiral, or for the Lords Commissioners for executing the office of Lord High Admiral, to require the promoters of such bill to deposit at the Office of the Admiralty, in addition to the plans, sections, or other documents, which may have been deposited at such office in compliance with the Standing Orders of either House of Parliament, all such statements and other documents as the said Lord High Admiral or Lords Commissioners shall deem necessary to explain the objects of the intended application to parliament, and the proposed interference with such tidal lands or navigation, as the case may be.

3. It shall be lawful for the said Lord High Admiral or Lords Commissioners, if they shall consider the same necessary or expedient, but not otherwise, to appoint a competent person or persons to be an inspector or inspectors, for the purpose of inquiring, in such manner and at such time and place as they shall direct, into all such matters as they shall deem necessary

to enable them to report to parliament their opinion upon every such bill touching the jurisdiction or authority of the Lord High Admiral.

4. For the purposes of such inquiry the said inspector or inspectors may, by summons under his or their hands, summon before him or them any person having the custody of any map, survey, or book made or kept in pursuance of any act of parliament, to produce such map, survey, or book for his or their inspection, and the said inspector or inspectors may summon, in manner aforesaid, any other person whose evidence shall, in the judgment of the said inspector or inspectors, be material to his or their inquiries, and pay or allow to every such person so summoned by him or them the reasonable charges of his attendance ; and the said inspector or inspectors shall also have power to administer an oath to all persons who may be examined by him or them touching the premises.

5. Any person, being summoned by such inspector or inspectors, who, after the delivery to him of such summons as aforesaid, or of a copy thereof, shall wilfully neglect or refuse to attend in pursuance of such summons, or to produce such maps, surveys, books, or other documents as he may require to produce under the provisions herein-before contained, or to answer upon oath or otherwise such questions as may be put to him by such inspector or inspectors under the powers herein contained, shall be liable to forfeit and pay a penalty not exceeding 5*l.*, which may be recovered before any two or more justices having jurisdiction within the town, district, or place wherein such inquiry shall be held ; and on conviction of the offender, and in default of payment of any such penalty, such justices shall be empowered and required to cause the same to be levied by distress and sale of the goods and chattels of the offender, by warrant under their hands and seals ; and such penalty shall be paid to the treasurer of the county within which such conviction shall take place in aid of the county rate ; provided that no person, other than the promoters of the proposed act, or their agents, shall be required to attend in obedience to any summons, unless the reasonable charges of his attendance be paid or tendered to him, nor to travel in obedience thereto more than 10 miles from his usual place of abode.

6. Before instituting any such inquiry the said Lord High Admiral or Lords Commissioners may, if they think fit, require and take such security for the payment of the whole or any part of the costs, charges, and expenses to be incurred by them in respect of such inquiry (including the remuneration of the inspectors) as to them shall seem fit ; and whenever any such security is given, the costs, charges, and expenses in respect whereof it is given shall, to such amount as shall be certified by the said Lord High Admiral or Lords Commissioners (not exceeding the extent or amount of such security), be a debt due to her Majesty from the

person or persons respectively by whom the same is entered into.

7. The persons whose names shall be subscribed to the petition for any private bill shall be deemed to be promoters of such bill for all the purposes of this act, notwithstanding the persons subscribing such petition shall have signed for or on behalf of any other party.

8. In citing this act in other acts of parliament, and in legal and other instruments, it shall be sufficient to use the expression "The Preliminary Inquiries Act, 1851."

THE COUNTY COURTS

THE COURTS AT WESTMINSTER.

A correspondent, T. J., in noticing the articles which have lately appeared in *The Times*, upholding the County Courts, and reflecting unfavourably on many of the learned Judges of the Superior Courts, suggests that those articles are from the pen of a writer who holds the office of Treasurer of the County Courts on several circuits, the emoluments of which are dependent upon the fees on business there transacted. The name of the gentleman, who is a barrister, has been mentioned; but we, of course, are not aware that he is the author of the articles in question.

It is proper to observe, in regard to the criticisms on the Judges noticed by our correspondent, (many of which are certainly most unjust and improper,) that the more recent article in *The Times* on Mr. Justice Patteson admirably and truthfully depicts the excellent qualities of that learned Judge. Other articles in the same journal contain just acknowledgments of the great learning, undoubted integrity, and impartiality of the Judges; but whenever the County Courts are under discussion, all who "hint a fault" in any of those immaculate tribunals, are the immediate objects of the severe censure. Let us hope this may be amended, for certainly the public in general will not follow any "leading" that attempts to lower the character of the Judges of England. Indeed, such mistaken attacks would detract from the general merit of the journal in which they appear.

CHANCERY REFORM.

RECENT IMPROVEMENTS AND DANGER OF PROPOSED REMEDIES.

A CORRESPONDENT at Manchester has favoured us with the communication of a Solici-

tor, dated from Bedford Row, and addressed to the Editor of a Weekly Newspaper. At the suggestion of our learned friend, we make the following extracts, which commence with some remarks on the case of the Duke of Bridgewater's Will, lately decided by Vice-Chancellor Lord Cranworth. The writer says:—

"A great deal has been said and written lately about the monstrous delays in Chancery, and no doubt there is ground enough for complaint. Here, however, is an instance of a case involving the right to very large estates, which, as it appears from the dates, must have been commenced and decided in less than six months, and which I know from other sources to be the fact. This shows, therefore, that a Chancery suit is not *always* the dilatory affair which has been supposed. Non-professional readers will no doubt wonder why *all* cases in that Court are not dispatched with equal promptitude; and as the subject of Chancery Reform is one now exciting much interest in the public mind, I will, devote a few lines to an explanation of the subject.

"Most of the cases which come before that Court, instead of involving a simple question of law or fact, such as whether *A.* or *B.* is entitled to an estate, or whether *B.* owes *C.* a sum of money, are cases in which a multitude of details have to be adjusted before a decree can be made. The subject is thus stated by the Chancery Commissioners of 1816:—'In administering relief, the Court of Chancery has frequently to unravel a long chain of fraud, and by a comprehensive decree to counteract the unjust consequences which have arisen or, may arise, from it—to investigate accounts, frequently complicated, between persons who employ all their art to perplex and resist—to enforce agreements for the conveyance or transfer of property in which many persons are interested and long examinations of title are necessary—to compel the correction of mistakes by which rights have been acquired according to the strict letter of the Common Law, but contrary to justice—to administer a large property encumbered with debts and involved in various difficulties, and to draw out a surplus to be distributed according to the complicated rights of creditors and various other claimants.'

"In all these cases it is evident, therefore, that an investigation, more or less extensive, must take place before complete justice can be done; and, as it would be impracticable for the Judges sitting in Court to conduct these inquiries, it has been found necessary from the earliest period, to refer all such matters to an inferior Judge, with directions to call the parties before him to examine them upon oath, and compel production of their books and papers, and report the result of his inquiries to the Court. This officer is the 'Master in Chancery,' with whose official designation most of your readers are no doubt familiar. If it should be asked, why cannot the Judges themselves do all this? I answer that it would be im-

possible without at least doubling their present number, and that matters of this nature, which partake more of ministerial than judicial duties, are better conducted by officers accustomed to such work. This is not an arrangement peculiar to the Court of Chancery. Each of the Common Law Courts has its staff of Masters; and it will, I believe, be found that every Court has necessarily some subordinate officers to work out matters of detail. The necessity of such a provision is constantly shown in our Courts of Law, in which it is notorious that an action in which disputed accounts or matters of detail are involved, is rarely disposed of in Court, but is generally referred to an arbitrator, who performs, *pro hac vice*, duties analogous to those of a Master in Chancery. I am very far from saying that this part of the machinery of the Court is perfect. On the contrary, I believe that much of the practice of the Master's Office is cumbrous, and ill adapted to the present state of society; but what I contend is, that while the Court exists there must be officers to discharge such duties as are now performed by the Masters, call them by what name you will. It must be stated in fairness, however, that very great improvements have been made in the practice of the Master's Office, within the last two or three years, and that no persons are more sensible of their defects or more anxious to supply a remedy than the solicitors who practise there. As a proof of this I may be allowed to state, that two or three years ago the Incorporated Law Society prepared a bill for removing many of those defects, and that they have used great exertions to get it passed into a law, but as yet, unhappily, without effect. It is well known, however, that the Chancery Commission is devoting its attention to this subject, and as all the members of that Commission are known to be earnest Reformers, it may be fairly expected that a remedy will at length be applied.

"There are other classes of cases, which come into this Court, which are frequently cited as instances of monstrous abuse. We frequently hear of Chancery suits lasting 20, or 40, or even 100 years, and the public is naturally shocked at the statement. A few words of explanation will put this matter in a different light.

"The Court of Chancery is, in some cases, by the act of the parties themselves, made a trustee of property, and whatever may have been the case in former times, I believe that since the days of Lord Chancellor Macclesfield no instance has occurred in which the property of suitors has not been honestly dealt with. In such cases, from the nature of the trust, the suit may nominally last for a great number of years after all litigation has ceased, but as soon as the parties entitled to the property are ascertained, and the property itself is realised, the necessary directions to distribute it are given on being applied for. It may, however, happen that a party is entitled for life to the income of funded property, and he may live half a century, during all which time the suit may be said to last. I myself know of suits

commenced 30 or 40 years ago, in which all contested questions have been settled long since, but still the suit remains in Court, as the period has not arrived for distribution, but the income is in the meantime applied according to the trust, and the property is perfectly secure. It would be obviously unfair, therefore, to cite cases such as this, as instances of Chancery abuse."

"A thorough reform in the Court of Chancery is now anxiously desired by the profession no less than by the public; and, it is evident, that the demand can no longer be delayed. It must not, however, be concluded that nothing has yet been done in the way of Chancery Reform. My recollection of the Court extends back to the time of Lord Eldon, and during the successive Chancellorships of Lords Brougham, Lyndhurst, and Cottenham, very much has been done, both to lessen delay and expense. I may perhaps be allowed to adduce instances of both. Formerly a cause, after being set down for hearing, had to wait its turn for decision, two years or more. That evil has been removed by the appointment of additional judges, and causes are now frequently heard in a few weeks, or even days, after the parties are ready. Many useless formalities have also been abolished which tended to delay the progress of suits. Then, as regards expense; there is no comparison between the two periods. In Lord Eldon's time a fee of 1*s.* 2*d.* per folio had to be paid for official copies which are now obtained for 4*d.* per folio. The orders of the Court were formerly drawn up at enormous length, and charged accordingly; whereas now all unnecessary statements in orders are abolished, and a fixed fee, of moderate amount is charged. I have known as much as 30*l.* and upwards charged for an order under the old system, which may now be had for 2*l.*, and the expense of other proceedings has been proportionably reduced. But the most effective reforms have taken place within the last two years, during the Chancellorship of Lord Cottenham. I allude more particularly to the General Orders of April, 1850, and the two acts passed in the Session of 1850, known as Sir George Turner's Act and Mr. Headlam's Act. The effect of these measures, besides other useful reforms, is to abolish the necessity of bills and answers in a vast variety of cases, and a party may now file a short statement of a dozen lines, called 'a claim,' serve his opponent with a copy of it, and summon him to appear in a few days to answer the demand. Under this form of proceeding, and where no reference to the Master was necessary before a final decree could be made, I have known cases heard and disposed of in a few weeks, and in some cases even days, after the suit was commenced, and at an expense comparatively trifling.

"That there are still defects in the practice of the Court of Chancery which call loudly for a remedy no one will be found hardy enough to deny; but even these may be exaggerated—and I cannot but think that much of the abuse

which has of late been showered so profusely upon this Court applies to a state of things which has in a great measure ceased to exist. To those eager reformers who call so loudly for the abolition of the Court as the only efficient remedy, I would suggest that some tribunal there must always be to deal with the difficult and complicated questions which arise under our highly artificial system of property, and if you abolish that Court you must establish another, which, under a different name, must discharge the same duties. An idea has recently been broached and met with favour in some quarters, that the systems of law and equity may be 'fused,' as it is termed, and the whole administered by one tribunal. I am far from saying such a scheme is impracticable, or that no benefit would result from it; but in order to the successful working of such a measure the whole of our complex system of law and equity must first be digested into the form of a code, and where shall we find the knowledge and talent required for such an Herculean task?

"In the meantime I do not think that much good is likely to arise from the attempt to blend the two systems, but that the present generation of Judges, at all events, had better continue to discharge those duties, and those only, with which they are familiar, and which they discharge so satisfactorily, instead of attempting to administer systems of law which must be entirely new to most of them. Such a 'fusion,' would lead to nothing but confusion. For instance, I do not think it would tend to the advancement of justice or the interest of suitors to see the learned and able Vice-Chancellor Knight Bruce presiding at the trial of a 'horse cause,' or the equally able and learned Baron Parke hearing a suit for specific performance."

COUNTY COURT ADVOCACY.

A MEETING of Attorneys was held at the Freemason's Tavern, on the 20th instant, to consider and discuss a proposed arrangement between the Bar and the Attorneys, regarding the advocacy of suits in the County Courts. It appears by some of the newspaper reports, that the meeting consisted of about 50 persons; others state the number to have been 100:—but at the most a very small proportion of the 3,000 London practitioners. We do not find amongst the speakers at the meeting any well-known name, except the Secretary of the Metropolitan and Provincial Law Association, who ably refuted some unfounded assertions regarding the apathy of the Law Institution.

¹ It is remarkable that the complaints against the "Law Institution" are made by non-members, who can only be imperfectly acquainted with its proceedings. The obvious remedy would be to join the society, and then they would have a right to urge forward any measure that might be expedient. Twenty members

It is much to be regretted that the promoters of the meeting did not previously consult the Established Societies of Attorneys in London before calling the meeting, especially as those societies are composed both of London and Provincial solicitors, and the present question concerns quite as much the country as the town practitioners.

The Chairman's proposal, as might have been expected, was not at all relished by the meeting. He recommended that a committee should be formed to communicate with the Bar, and arrange a scale of fees for conducting County Court business to the advantage of counsel and attorneys without affecting the suitor; and in the course of his speech proposed, that where the client paid a fee of a guinea, it should be divided between the barrister and attorney!

Now it seems evident that if this proposition had been adopted, the Bar would not have concurred in the arrangement, and if a few individuals had done so, they would have run serious risk of being disbarred!

It was also suggested by the Chairman, that in cases under 20*l*. attorneys should exclusively act as advocates, and above that sum barristers should alone appear. But it is not very likely that the attorneys will abandon the right of advocacy under the act in cases above 20*l*.—a right evidently conferred by the Legislature for the benefit of the suitors, upon a very economical scale of charge.

Besides, how would the general body of attorneys be bound by the proposed arrangement if the Bar had assented to it? The profession has had some experience in these attempts to establish voluntary restrictions in opposition to legal rights. Many years ago, the Old Law Society, consisting of the most eminent practitioners, with the Bank Solicitor as Prolocutor, endeavoured to effect an arrangement with the leading counsel to limit their practice to particular Courts. Several gentlemen acceded to the proposal, and confined themselves to one Court; but the solicitors, as a body, did not join with their associated brethren in supporting those counsel, and they sustained great loss in their practice.

Again, the far more numerous body of the Incorporated Law Society, including amongst its members those who transact at least three-fourths of the law business of the metropolis, and a large part of the country, passed resolutions at a general meeting about two years ago, to settle the practice of solicitors in retaining counsel. The Bar collectively through the Inns of Court, and all the leading counsel, were consulted on the proposed regulations, and solicited to revise them; yet those rules have not yet been finally recognized by the whole of either branch of the profession.

may convene a general meeting, if the Council decline to comply with their requisition; and 10 of the Council annually go out of office:—a more liberal constitution could scarcely be desired.

The fees or gratuities to the clerks of counsel have also been the subject of repeated deputations to the heads of the Bar. The encroachments of Certificated Conveyancers on the province of solicitors have likewise been represented to the authorities. Our readers know with what success these suggestions have been attended.²

We deem it right to point out these matters, in no unfriendly view towards the gentlemen who (no doubt with good intentions) have brought the present subject forward; but in order to effect any useful purpose in such cases, the influential societies, both in town and country, should be applied to. In fact, the meeting at last came to a resolution,—“That the Council of the Law Institution and the Managing Committee of the Metropolitan and Provincial Law Association, be requested to take the necessary steps for promoting a proper understanding between the two branches of the Profession on the question of County Court Advocacy, and for that purpose (should they think it advisable) to call a general meeting of the profession on the subject at an early day.”

So the matter stands; we will not attempt to anticipate the course of proceeding, but have no doubt that due attention will be paid to the suggestion.

The course which the attorneys may deem it expedient to take with reference to that portion of the Bar which can alone be interested in this question, ought not, we conceive, be the subject of dispute at a public meeting. The junior practitioners, who are desirous of acting as advocates in the County Court, if they require the aid of their seniors, should, we conceive, prepare the details of some specific plan for consideration, and, if necessary, propose a private meeting on the subject to settle those details before communicating them to the Bar.

From the information we possess, it appears highly improbable that the practitioners in the country, particularly in the large towns, will consent to forego the right of advocacy in cases above 20*l*. Our opinion is, that the Bar may safely depend on the delivery of briefs in all complaints, whether above or below 20*l*., where the difficulty of the case or the wish of the client may justify the expense. It is manifestly the interest of the attorneys to prepare briefs on which their emoluments are larger than for a personal attendance as advocates, and when counsel are employed their responsibility is discharged.

² We have given these instances to show that exertions have not been spared to effect such arrangements with the Bar as appeared desirable in practice; but the constitution of the Bar renders it difficult for any of its members to enter into a treaty with the other branch of the profession. Whether Lord Brougham's plan of a Law University, combining the Inns of Court (representing the Bar), and the Inns of Chancery (representing the solicitors), will remove the difficulty, remains to be seen.

INTENDED RETIREMENT OF MR. JUSTICE PATTESON.

THE announcement that, after next Hilary Term, Mr. Justice Patteson will retire from the Queen's Bench, has been heard by all branches of the profession with much regret; yet with the personal consolation, that, except for his infirm sense of hearing, the learned Judge retires in good health and with his eminent faculties wholly unimpaired. We shall have another opportunity of paying respect to his high attainments as a lawyer and a judge, his benevolent and amiable character, and the universal respect and regard which he has commanded from all ranks and classes, alike of the public as of the profession.

Sir John Patteson practised as a Special Pleader in 1817, was called to the Bar by the Honourable Society of the Middle Temple on the 6th July, 1821, and, in less than 10 years, was promoted to the Bench, namely, in Michaelmas Term, 1830. He was one of the three additional Judges first appointed in the Common Law Courts, under the 11 Geo. 4, and 1 Wm. 4, c. 70. His Lordship has therefore been 21 years on the Bench, and we need not add, is peculiarly well entitled to his full retiring pension.

It has been suggested, that the decrease of business in the Superior Courts, consequent upon the establishment of the County Courts, may render the continuance of 15 Judges unnecessary. It will be recollected, however, that the Queen's Bench is not the Court in which there is the least Common Law business.

MASTERS EXTRAORDINARY IN CHANCERY.

From August 22nd to October 17th, 1851, both inclusive, with dates when gazetted.

Mitchell, Sidney John, Birmingham. Oct. 10.

Wansey, Arthur Henry, Bristol. Oct. 14.

Whitehead, Mark Henry, Heywood, Lancaster. Sept. 16.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From August 22nd to October 17th, 1851, both inclusive, with dates when gazetted.

Broughton, William and Francis Raynes, Bawtry, Attorneys and Solicitors. Oct. 17.

Bush, John Alderton, and James Dalling, 32, Essex Street, Strand, Attorneys and Solicitors. Sept. 23.

Clarke, William Lewton and Charles Stewart Clarke, 28, Broad Street, Bristol. Attorneys and Solicitors. August 26.

Clough, William, and Thomas William Clough, Pontefract and Huddersfield, Attorneys and Solicitors. August 29.

Dean, William, James William Dean, and John Joseph Dean, 16, Essex Street, Strand, Attorneys, Solicitors and Conveyancers, (So far as concerns the said John Joseph Dean). Oct. 17.

Harle, William Boulton, and William Clarke, jun., Leeds, Attorneys and Solicitors. Sept. 2.

Hayward, John, and Charles Colyer, Dartford, Attorneys and Solicitors. August 29.

Nicholson, William, James Nicholson and Peter Nicholson, (deceased), Warrington, Attorneys and Solicitors. Sept. 30.

Pain, Edward, and John Hatherly, 5, Great Marlborough Street, Middlesex, and 5, Gresham Street, City, Attorneys and Solicitors. August 22.

Preston, John Hughes, and William Joseph Browne, Newcastle-upon-Tyne, Attorneys and Solicitors. August 29.

Williams, Richard, and Thomas Gold Edwards, Denbigh, Attorneys and Solicitors. Sept. 30.

NOTES OF THE WEEK.

NEW VICE-CHANCELLORS.

THE Queen has been pleased to direct Letters Patent to be passed under the Great Seal of the United Kingdom, granting the office of a Vice-Chancellor unto *Richard Torin Kindersley, Esq.*

The Queen has also been pleased to direct Letters Patent to be passed under the Great Seal of the United Kingdom, granting the office of a Vice-Chancellor unto *James Parker, Esq.*—From the *London Gazette* of 21st Oct.

COLONIAL PROMOTIONS.

The Queen has been pleased to appoint *Joseph Hensley, Esq.*, to be her Majesty's Solicitor-General for Prince Edward Island.—From the *London Gazette* of the 21st October.

NEW MASTER IN CHANCERY.

The vacant Mastership in Chancery, occasioned by the promotion of Mr. Kindersley, will be filled, we understand, by the appointment of *J. Walker, Esq., Q. C.*, who was called to the Bar by the Honourable Society of Lincoln's Inn on the 23rd November, 1819.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Esparte Allen. July 19, 23, 1851.

PAYMENT OF COSTS INCURRED BY OFFICER OF COURT IN PERFORMANCE OF DUTIES OUT OF SUITORS' FEE FUND.

On petition under the General Order of March 5, 1836, the Court directed payment out of the Sutors' Fee Fund of the costs to which the tipstaff of the Court had been put, in appearing and pleading to, and defending, an information filed against him for refusing to obey the directions of the keeper of the Queen's Prison in respect of a prisoner, where such costs were incurred in the performance of his duties as an officer of the Court.

Makins, Q. C., appeared in support of this petition, which was presented on behalf of the tipstaff of this Court, seeking the taxation and payment out of the Sutors' Fee Fund of the costs which he had incurred in appearing and pleading to and defending an information filed against him for refusing to perform certain directions of the keeper of the Queen's Prison in respect of a prisoner confined in the prison. The petitioner, it appeared, was acting in the performance of his duties in executing a warrant against two persons for contempt of Court.

In re *North of England Joint-Stock Banking Company*, 41 L. O. 394, was cited, and the Order of 5th March, 1836, which directs, that

"all other claims for the money out of the two accounts therein mentioned," "or out of 'the Sutors' Fee Fund Account' "(except in cases of *forma pauperis*,) should be made by the said solicitor to the Sutors' Fund; but upon the refusal of such solicitor to apply, the party making such claim should be at liberty to bring the propriety thereof by petition before this Court, subject to the discretion of the Court as to the payment of costs as afore said."

J. H. Taylor for the Sutors' Fund, contra.

The Lord Chancellor made the order as prayed.

Master of the Rolls.

Davis v. Barrett. July 16, Aug. 4, 1851.

MORTGAGE OF JAMAICA ESTATES.—RECORDING DEED.—PRIORITY OF INCUMBRANCES.

S. B., on his marriage in 1812, charged certain estates in Jamaica with 20,000*l.* for his son, *S. G. B.*, and in 1816 he mortgaged the estates to *C. and L.* to secure 6,000*l.*—*S. G. B.* having become entitled to the reversion under his father's will, purchased the charge of *C. and L.* for 8,000*l.*, giving them his bond and leaving the mortgage deed in the hands of a trustee as a collateral security, and on his marriage in 1835, settled the estates for the benefit of his wife and children, but the deed was not recorded according to the law of the island until

¹ Senders' Orders in Chancery, vol. 1, part 2, p. 812.

1846, the plaintiffs having, in 1842, become mortgagees under a deed which was duly recorded: Held, that the plaintiffs were entitled to priority over the parties claiming under the marriage settlement and to C. and L.

UPON the marriage of Samuel Barrett in 1812, certain estates in Jamaica were charged with the payment of 20,000*l.* to his son, Samuel Goodin Barrett, and in 1816, the settlor mortgaged the estates to the defendants, James Graham Clarke and Joseph Lamb, as a security for 6,000*l.* S. G. Barrett having subsequently become entitled under his father's will to the reversion in the estates, subject to the payment of certain debts and legacies, purchased in 1841 for 8,000*l.* the mortgage debt of Clarke and Lamb, giving a bond for the payment of that amount, and the mortgage deed remaining in the hands of a trustee as a collateral security. Under his marriage settlement, dated November 25, 1835, S. G. Barrett settled his interest in the estates on his wife and children, but it appeared this deed was not duly recorded according to the law of Jamaica; and on March 15, 1842, S. G. Barrett mortgaged his estates and interest in the 20,000*l.* to the plaintiffs to secure a debt of 7,000*l.* and the indenture was duly recorded. The deed of 1835 was not recorded until the year 1846. This bill was filed by the plaintiffs for a declaration of the priority of their claim to the defendants Clarke and Lamb, for an account and payment, or in default for a foreclosure.

Lloyd, Prior and Mackeson, for the plaintiffs, in support, on the ground the mortgage deed of 1842 had been recorded before the settlement of 1835.

R. Palmer and Burdon, for the defendants Clarke and Lamb, contra, contended, that the mortgagor was prevented by his purchase of their charge of 6,000*l.* for 8,000*l.* to deal with his interest in prejudice to their security.

J. Bailly and Marett, for other parties.

The Master of the Rolls, after taking time to consider, said, that the plaintiffs were entitled to priority over the other charges, and the usual decree was accordingly made for foreclosure or payment.

Vice-Chancellor Knight Bruce.

Cubitt v. East and West India Docks and Birmingham Junction Railway Company. Aug. 4, 1851.

LANDS' CLAUSES' ACT. — RAILWAY COMPANY. — TAKING OF LAND AFTER RECONVEYANCE TO LANDOWNER BY COMPANY. — INJUNCTION.

A railway company, after having purchased from a landowner certain lands for the purposes of their railways, reconveyed a portion thereof, in the belief that such part would not be required, but it was subsequently discovered that the line would not be safe without the part in question, and they accordingly served notices under the

8 & 9 Vict. c. 18, of their intention to take the same. A motion for an injunction was granted to restrain the company's proceedings under the notices, upon the plaintiff's undertaking to be answerable in damages, and not to take the advantage of the lapse of time pending the proceedings at law to determine the question.

THIS was a motion for an injunction to restrain the defendants from proceeding under the 8 & 9 Vict. c. 18, (the Lands' Clauses' Consolidation Act, 1845), in pursuance of notices of their intention to take the same, to take possession of the plaintiff's land, or from taking or continuing in possession of any part thereof. It appeared that the defendants had agreed to purchase some ground at Islington, of which the plaintiff was owner, and that he accordingly refrained from opposing their act. The lands were afterwards conveyed to the defendants by deed, dated in June, 1848, but a portion thereof was reconveyed to the plaintiff in April, 1851, the defendants considering they should not require all the land. The company having subsequently ascertained that they should require the portion so reconveyed, in order to render the line safe, served the usual notices under the 8 & 9 Vict. c. 18.

James Parker and Lewin, for the plaintiff, contended the defendants had exhausted the compulsory powers conferred by their first purchase, and that the notices were contrary to their covenant for quiet enjoyment.

Bacon, Daniell, and Rodwell, for the defendants, contra.

The Vice-Chancellor said, that the injunction would be granted as to the re-sold land, on the plaintiff undertaking to be answerable in damages, and not to take advantage of the lapse of time pending the proceedings at law to determine the question.

Vice-Chancellor Lord Cranworth.

In re Wolverhampton, Chester and Birkenhead Junction Railway Company, ex parte Holroyd. Aug. 4, 1851.

WINDING-UP ACTS. — CONTRIBUTORY. — LEAVE TO APPEAL FROM MASTER'S DECISION NOTWITHSTANDING LAPSE OF TIME.

The Master to whom the time of winding up a railway company had been referred, included in the list of contributories H., who was a provisional committee-man and an allottee of shares, although he had not accepted them, and he afterwards paid 120*l.* towards the expenses, on the understanding he should be discharged from all further liability, without appealing from the Master's decision. About a year afterwards the Master being about to make a call on H. to raise a sum of money, H. applied for leave to appeal from the former order, cases having in the interim been decided negating his liability. The Court granted the application on an undertaking that the pay-

*ment of 120*l.* already made should not be disturbed.*

In this case Mr. Holroyd had been placed on the list of contributories in respect of 25 shares which had been allotted to him in the above company, of which he was one of the provisional committee. It appeared, however, that he had never accepted them, but he had paid a sum of 120*l.* towards the expenses of the undertaking, on the express understanding he would be discharged from all further liability. The Master being about to make a call on Mr. Holroyd for the purpose of raising a sum of 5,000*l.*, the present application was made for leave to appeal against the decision of the Master placing him on the list of contributories. The order was made about a year ago.

Rolt and Selwyn, in support, on the ground that the view now taken of the liability of provisional committee-men who had never accepted the shares allotted them, had varied, and that the appellant would now be held liable as a contributory.

Bethell and Roxburgh, for the official manager, contra, on the ground of the delay.

The Vice-Chancellor said, that the application would be granted, as it appeared when Mr. Holroyd paid the 120*l.* he considered he had no further payment to make, and therefore delayed coming to the Court, but Mr. Holroyd must undertake not to apply for a return of the 120*l.* so paid by him.

A similar order was also made in the same matter, *Esparé Ingham*.

Vice-Chancellor Turner.

Anderson v. Guichard, July 24, 1851.

ADMINISTRATION CLAIM.—HEARING BEFORE DETERMINATION AS TO WILL ENTITLED TO PROBATE IN ECCLESIASTICAL COURT.—RECEIVER.

Pending the determination of a question in the Ecclesiastical Court, as to which of two wills (the one executed in England and the other in France) was entitled to probate, a claim filed by the executor of the English will for the administration of his testator's estate, came on for hearing. A receiver had been appointed of the estate on motion. The Court made an order for the receiver to be continued, and for payment of the taxed costs of the suit out of the funds in Court.

THIS was a claim under the Orders of April, 1850, for administration of the estate of a Mr. Anderson, filed on behalf of the executor of a will executed by the testator in England, there being another one which had been made in France. The question as to the will entitled to probate was in course of litigation in the Ecclesiastical Court, and in the meantime a receiver had been appointed, on motion, of the estate.

Surrage, for the plaintiff; *Elderton*, for the defendant.

The Vice-Chancellor said, the only order that could be made was to continue the receiver, and for payment of the taxed costs out of the fund in Court.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

CONSTRUCTION OF WILLS.

[Concluded from p. 485.]

[For the previous Sections of the Digest in this Volume, see

House of Lords Appeals, p. 16.

Privy Council Appeals, p. 35.

Bankruptcy and Insolvency, pp. 105, 125.

Lacey, p. 147.

Courts of Equity:

Law of Costs, p. 163.

Law of Attorneys and Solicitors, p. 185.

Joint-Stock Companies' Winding-up Act, pp. 204, 246, 265.

Law relating to Trustees, p. 285.

Evidence, pp. 306, 326.

Jurisdiction in Suits for Discovery, p. 347.

Law of Property and Conveyancing, pp. 366, 395.

Law of Wills, pp. 406, 426, 444.

Construction of Wills, pp. 465, 603.]

PRECATORY TRUST.

Family.—Testator, by his will, gave personal property to his wife, absolutely, for her own use and benefit. By a codicil, which was in the

form of a letter to his wife, he said:—"It is my wish that you should enjoy everything in my power to give, using your judgment as to where to dispose of it amongst your children when you can no longer enjoy it yourself, but I should be unhappy if I thought it possible that any one not of your family, should be the better for what, I feel confident, you will so well direct the disposal of."

Held, that the word "family," was not confined to children, but included descendants in every degree; and that the wife was entitled to the property, absolutely, and not merely for her life with a power in the nature of a trust for her children. *Williams v. Williams*, 1 Sim. N. S. 358.

POWER OF APPOINTMENT.

Children.—A power to appoint amongst children is not within the 27th section of the Wills' Act, and a mere general devise or bequest to a child will not operate as an execution of such a power. *Cloves v. Audry*, 12 Beav. 604.

See Appointment.

POWER OF SALE.

Testatrix gave, devised, and bequeathed all the rest, residue and remainder of her estate

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CLOSE OF VOLUME XLII.

THE Notes given in the Postscript, to save space are not repeated in the body of the work, being for the most part of a temporary nature,—such of them, however, as are desirable to be preserved for future reference are now added.

Queen's Counsel attending Master's in Chancery.—An inquiry has been made whether a Member of the Outer Bar, promoted to the rank of Queen's Counsel, can attend a Master in Chancery in the cases in which he was *previously retained and attended*, where the client calls for the continuance of his services? The question is put on the part of the client, who, it is contended, ought not to be prejudiced by the promotion of his advocate. It is said, also, that at the Common Law Bar, Queen's Counsel, even the Attorney-General himself, may attend an *arbitrator*, (though unadorned with silk). It is, therefore, urged that the same rule should prevail on a reference to a Master in Chancery, as, for example, in an important pedigree case, wherein the junior has been long engaged. We apprehend, however, that the *etiquette* of the Bar prevents any one who has attained the dignity of her Majesty's Counsel from appearing either before a Judge at Chambers or a Master. What may be hereafter done, when the rules of the Bar are revised, as they must be, if the Attorney-General's clause in the County Courts' Extension Bill should ever pass, we know not; but the leading principle of the legislature seems to be, at all hazards, to promote cheap and prompt decisions, without regard to professional arrangements. The present seems to be a question between the Inner and Outer Bar, which must be determined at present by the usage of the Bar itself.

Costs in the County Courts.—We are requested to add to the report of "*Bearcroft v. George*," in the *Legal Observer* of 17th May last, that it appears by a certificate from Mr. Honyman, the counsel in the case, it was decided solely on the ground that the plaintiff was too late in applying for the costs,—the defendant, under the peculiar circumstances of the case, having been prejudiced by the delay; and that the Court gave no opinion whatever as to the soundness of Mr. Baron Platt's decision in *Power v. Jones*.

Advertising Attorneys.—We have received some communications regarding the advertisements which occasionally appear in the newspapers from the lower class of practitioners. Amongst 10,000 men, (many struggling for subsistence,) it is not surprising that unusual means should be adopted to obtain employment. Some of the advertisements are highly censurable, for they promise what cannot be legitimately performed; but others are very pitiable, for they show much poverty but nothing immoral. The law reformers provide no compensation for an attorney's loss of practice by their speculative alterations.

ALTERATIONS IN THE LAW.—SUGGESTIONS OF ATTORNEYS AND SOLICITORS.

THE various projects for altering the jurisdiction and practice of the Courts of Law and Equity, the Law of Property, and the Practice of Conveyancing, more than ever demand the constant attention of the Profession. Though some useful changes have been effected, they have been accompanied by much inconvenience and injury, as well to the Suitors as the Profession;—many alterations have been injudiciously made, and many improvements are still required. It behoves the members of the profession, therefore, to unite in guiding the future measures for correcting real abuses, and satisfying the demands for further reform, so far as they are consistent with the due administration of justice, but let them yield not to ignorant or interested clamour.

Whilst the *Bar* is ably represented by several Quarterly and Weekly Journals, it is manifestly just and expedient that the *Attorneys and Solicitors* should possess an Organ devoted to their peculiar interests. The *LEGAL OBSERVER* has been established at the instance, and is conducted under the supervision, of Solicitors of experience for the purpose of supplying this desideratum and affording the means of ascertaining the sentiments of the Members of their Branch of the Profession, and of diffusing a knowledge of all subjects bearing on their welfare.

The Editor deems it essential to renew the call upon his Brethren to consider their present position and future prospects, and to communicate their suggestions for the promotion of their general benefit and advantage. It is of great importance that the opinions of Attorneys and Solicitors, as well in all parts of the Country as in Town, should be collected upon the various important topics which affect the position and welfare of their Branch of the Profession.

Letters addressed to "The Editor of the *Legal Observer*," will receive immediate attention.



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